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LETTER

TO THE

RIGHT HON. ROBERT PEEL,

ONE OF HIS MAJESTY'S PRINCIPAL SECRETARIES OF STATE, &c. &c. &c.

ON THE

PROPOSED CHANGES

IN

THE LAWS OF REAL PROPERTY,

AND ON

MODERN CONVEYANCING

BY JONATHAN HENRY [illegible],

BARRISTER-AT-LAW.

LONDON:

JOHN MURRAY, ALBEMARLE-STREET.

MDCCCXXVII.

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A

LETTER,

&c.

SIR,

THOUGH, in a constitutional, and perhaps in a moral, view, a just and effectual criminal jurisprudence be a more important object than the laws of property, laws of the latter description affect the happiness of a far greater number of individuals.

The laws of real property must be subject of very general interest in every country, but they are particularly so in England. The soil, and all that falls under the name of real property, is distributed among a very large body of proprietors; the fortunes of, perhaps, a still greater number consist of money resting upon landed security; and there are many persons who never possessed a foot of land, or any

interest in land, whose property for many purposes comes within the scope of the laws of real estate. In fact, the doctrine of courts of equity, that money directed to be laid out in the purchase of land, shall be considered as land, brings the English laws of real property to bear upon a great mass of property which, from its nature, seems to be exempt from their operation.

The great approbation which has followed the steps you have taken for the improvement of another branch of the law, naturally leads you to attend to the complaints of the expense and trouble attending the transfer and settlement of real estate. In these inquiring times, it is natural that men should try to ascertain whether this trouble and expense are evils which admit of no remedy, or are consequences springing from a vicious system, which may be abolished or altered. The latter being the more obvious, as well as the more consolatory conclusion, a great

part of the public has fallen in with it; and something like discontent with the laws of real property, and with what is called the practice of conveyancing, has grown up. Malice has delighted in fomenting this discontent; some men have not disdained to avail themselves of the mistaken notion, that, because they are lawyers, they are skilled in the laws of real property, and have propagated crude and absurd opinions on the subject; and others have been led (perhaps unconsciously) to exaggerate the grounds of dissatisfaction, in order to give currency and value to their own projects of improvement.

The prevalence of the complaints to which I have alluded, is not occasioned solely by the increased expense of conveyancing business of late years. Business of that nature was at all times attended by an expense which was heavily complained of by the parties who paid it; but of late, sales, mortgages, settlements, and trust-

deeds of all kinds, have become so much more numerous than formerly, that, if the expense remained the same, the complaints would be greater, because the sufferers are more numerous.

There is little doubt but your zeal and ability in your present undertaking will effect great things for the public good; you will be able to give greater security to titles, and to remove certain technical rules which, without any regard to justice, defeat the lawful intentions of parties in the disposal of their property: but in your attempts to save expense and trouble, you will find yourself confined within narrower limits than is generally supposed. The public hopes being founded, to a considerable extent, on mistaken notions, some disappointment will follow; and it argues no unfriendliness to your popularity, to attempt to repress the general expectations within more reasonable limits.

The truth is, that some part, but com-

paratively a small part, of the trouble and expense attending the disposal of real property may be got rid of: to a certain extent that expense is the price paid by the public for advantages which are more than equivalent to the cost; advantages which the public has no notion of relinquishing, but which cannot be procured at a cheap rate. Some part of the expense and trouble arises from the enduring nature of the property; and nearly one-half of the whole cost is occasioned by the stamp-duties payable to the State, and other payments, in the benefit of which practising lawyers do not participate.

I shall make some observations on each of these heads; but as the expediency of making a sweeping abolition of all the existing laws of real property, and of substituting a new code, will probably fall under your consideration, I shall begin by some remarks on that subject.

I do not profess to be versed in any

other laws than those of England; but the *history* of all codes of law relating to property in civilised countries is the same, and, in the nature of things, must be the same.

A code provides a number of regulations, which are intended to be as extensively applicable as possible, that is, to govern the greatest possible number of cases; but the regulations of the code being necessarily limited, it is presently discovered, that the number of cases to which they apply is comparatively small. The human intellect being unable to foresee every possible posture that human affairs will assume, any set of rules which it provides *à priore* must fail of having any proper application to a large class of cases, namely, to those which were never contemplated.

The project of framing such a system *ab antè* is not much more feasible, than it would be for an artist to exhaust his fancy in painting human heads and figures, in

the hope that each study would prove to be a likeness of some individual. A code, in fact, furnishes an outline, but the details are filled up *pro re natâ;* the great body of the law is made afterwards.

It makes no difference to the argument in what way this subsequent filling up is effected, whether by successive additions to the code, by edicts or rescripts from competent authority; by commentaries from private practitioners or studious jurisconsults, on which it is agreed to confer an authority, which, in the nature of things, ought not to belong to them; or by making prior decisions a rule for future judges. By the admission of one or more of such subsequent aids, every reasonable system of law relating to property must grow up.

It may be urged, that my argument goes to prove the imperfection of all systems of law, and that the legislation of every country (I use the word legislation in its widest sense) can, at the best, be only in a

state of progressive improvement. I admit the inference in its fullest extent, and it clearly goes to prove my position. When a body of laws, founded on a code, and enriched, or, at all events, amplified, by the additions of successive ages, still falls short of supplying rules applicable to all cases, how great must be the deficiency of a system which has derived none of the advantage which time alone can confer!

I may here notice also, that a system of law of property, newly introduced, labours under another and peculiar disadvantage. The contracts and transactions of men have a natural tendency to assimilate themselves to laws which have long existed. This process of assimilation is gradually and imperceptibly effected, by the general diffusion of a certain popular knowledge of legal principles which are sufficient to mould men's dealings so as to bring most transactions within the scope of known rules, and thereby greatly

diminish the number of cases not provided for. This is an advantage of which a newly-framed body of law is entirely deprived, except so far as it is conformable to a previously existing system.

If a code of laws be framed, and all such subsequent aids as are above referred to be excluded, one of two consequences must follow; either an enormous discretion must be reposed in the judge, and, in order to do justice, he must make an *ex post facto* law for the infinite number of cases to which the provisions of the code have no proper application; or the code must be a sort of bed of Procrustes, into which all cases must be forced, however unsuitable it be to their dimensions.

In the latter case, it is sufficiently manifest that great injustice must occur, and it will not improve the matter to leave a discretion in the judge; for, after giving him credit for perfect rectitude of intentions, uncertainty of the law, and there-

fore abundant litigation and insecurity of property, will manifestly flow from such a state of things; reason being so fallible, that men, when left to its sole guidance, come to opposite conclusions upon the same matter.

Where there is a system of law of long standing, such as the English laws of real property, an immense majority of the cases, in which men fancy that they have opposing rights, is settled by the opinions of lawyers, without any adverse litigation. These opinions cannot be given with such confidence as to prevent litigation, except where the law has become comparatively perfect by length of time. An abolition of the old law, and a substitution of a Code, would at once put an end to this amicable settlement of rights; and a suit or an action would take place, in most instances, in which an opinion of counsel is now thought sufficient.

By abrogating the old law, and substi-

tuting a Code, we should needlessly throw down an edifice which we must spend the next hundred years in rebuilding. If we undertake this labour in the hope of benefiting a remote posterity—this is an expectation in which we should not too readily indulge; it is by no means clear that our work would prove more satisfactory to our descendants, than the work of our ancestors proves to us. But, be this as it may, we and our immediate posterity must be sufferers. Till time has done its work in perfecting the new system, litigation and insecurity of property must exist, to an extent that no wise legislator would willingly encounter.

Should the French Code be quoted as an answer to the above observations, it is to be remarked that the advocates for change in this country, while they love to refer to this work, have not yet furnished us with exact information of its effects. To a certain extent it has taken the dispo-

sition of every man's property out of his hands, and made a disposition of it for him. This certainly does diminish litigation, and save trouble; but any abridgment of a man's power of disposition over his property, is surely a diminution of its value. It is impossible to calculate the precise effects upon the public of a legislative interference of this nature with the power of disposition, but that it is a hardship upon the individual there can be no doubt: it makes every man's property so much less his own. The objections to a law of this nature will readily present themselves to the mind of an Englishman, who, though he may willingly part with a portion of his property to supply the necessities of the state, will hardly brook a new law which takes the disposal of it out of his hands, upon the mere presumption of disposing of it more equitably, and more judiciously, than he can.

The French code has, in fact, produced

all the inconveniences which, I think, must follow all similar undertakings: such, at least, is the result of my individual inquiries; which, though limited, were made without any desire to find a confirmation of a preconceived theory.

The quantity of litigation in France is enormous, far exceeding that in this country; and the disproportion becomes more manifest, when it is taken into consideration, that the transactions relating to land in the way of sales, mortgages, settlements, and trust-deeds, are as nothing in France, compared to the number of like transactions, which the more commercial and enterprising spirit of this country gives rise to.

But however great the evils may be of an entire change of the laws of property, a state of things may be imagined in which they will be but slightly felt, and in which it will be wise to encounter them. Since the commencement of the Revolution, France had been the theatre of the

greatest violence; property had been acquired by a variety of means besides fair purchase or exchange; men were so much accustomed to barefaced injustice, that the hardships arising from a defective law were but slight in comparison. There the old law was fitted for the old state of things. By the Revolution landed property had, in a great measure, changed its owners; new men, and new maxims had grown up; and the whole system of society was undergoing change. The seal was not set to the work of revolution till the laws were also changed; till then it was incomplete. To give permanency to the new government, it was a natural step to get rid of laws in which traces of old institutions were too deeply graven to be easily effaced. The French codes were not framed merely to give more convenient civil regulations to the community; the object was to revolutionise the law. Such changes as were effected could not

be matter of indifference to the government. The right of primogeniture may be a regulation which is beneficial to mankind, or it may be hurtful; but it is impossible to deny that the existence of such a right is a question of policy in which the government of a country is deeply interested. In the new state of things the old law was doubtless inconvenient; and the revolutionary ruler had an obvious opportunity of casting some discredit on the old government, and at the same time of exhibiting his own zeal, and energy for the public service by framing the new codes.

England may have reasons of her own for changing the laws of real property; but it is a strange mistake to suppose, that the same reasons can exist in this country that existed in France under Napoleon; or that the inconveniences of such a measure would not be felt more sensibly in this country than they were there.

If the evils from an entire change of the

law must be very great, it follows that no means of preventing their occurrence should be left untried; and, for this reason, the advocates of such a change should be deprived of the plausible arguments for their opinions which they derive from the imperfections of the present system.

It is a question of policy, how far the owner of property ought to be enabled to withdraw it from commerce, either by giving interests to persons, and depriving them of the power of alienation, or by creating future or contingent interests which are unalienable, because they do not vest in any person till some remote period. In both respects the law of England seems liable to no material objection. By that law, the power of disposition is an inseparable incident of property, that is, it is always competent to persons of full age and sound mind, to dispose, in favour of others, of all the property which, in default

of disposition, belongs to themselves. The only exceptions to this rule are trusts for the separate use of married women, to which a clause forbidding alienation may be annexed; other interests of a certain description, in personal property, of which it appears that married women cannot by any means be deprived, by alienation during their coverture; and the pay or salary of certain public servants, which are held to be unalienable, on grounds of public policy.

The power of creating interests to arise at a future period, and which, in the mean time, can neither be disposed of nor barred, is also placed within reasonable limits by the law of perpetuities; so that in the present state of society no change seems desirable.

But however wisely a law may settle what interests the owner of property can create, a great imperfection exists, if the owner of an interest in land is not enabled

to do that with certainty and with ease, which the policy of the law has once determined that he may do. In this last particular the English laws of real property have several defects: the most flagrant is the contrivance of common recoveries as a mode of barring estates tail and remainders over. The law says, that a tenant in tail in possession, or a tenant in tail in remainder, with the concurrence of the person entitled to the first estate of freehold, may bar the estate tail, and all subsequent remainders, and acquire the fee-simple or absolute ownership of the property; yet the theory upon which this effect is given to recoveries is such, that persons substantially possessing the interest necessary to enable them to suffer a recovery with effect, find themselves disabled from taking that step, by circumstances which have no connexion with, and which ought to have no influence over, their powers of disposal. The theory in

question operates still more mischievously in cases where persons have reason to suppose that they have acquired the fee-simple of an estate by means of a recovery, and it afterwards appears (when too late) that the whole has miscarried from a mistake in the process, the occurrence of which is extremely likely, and which, in fact, does frequently occur. The effect of a mistake of this sort is to carry the estate to A. when B. would otherwise have been entitled to it, when he probably purchased for a valuable consideration from a person who was competent to give him a good title, and who intended to do so. This is an evil of monstrous magnitude, because it affects the security of property, and creates great injustice. The expense of common recoveries in ordinary circumstances is no slight evil, but it is of little importance compared to the injustice and hardship which individuals suffer from the cause of which I have just

spoken. There is no part of the community which has so direct an interest in the discontinuance of this expense as practising lawyers. They do not participate in the benefit of it; and it frequently creates an obstacle in the way of transactions from which they would derive employment. It is a matter foreign to my purpose, to inquire whether the money paid upon the suffering of recoveries can be altogether remitted to the public; or if there be good reason against that, whether the same tax may not be more conveniently levied in some other way.

The expenses of which I have been speaking occur in all recoveries; but the theory before alluded to (rendering it necessary to get in outstanding legal estates), in many cases, occasions an enormous extra expense. I think that the forms of common recoveries should be abolished, and some simpler forms adopted in their stead; but it is more important that the

theory should be so far altered, or such means devised for satisfying its requisitions, that persons, who substantially possess the interest enabling them to suffer recoveries with effect, may not be deprived of that privilege, because the legal freehold is out-standing in some person whom they have a right to call upon to convey it, but who may be abroad, or may have died without an heir, or may, from mere caprice, refuse to convey till it is too late *.

Fines are a head of the law, the expense

* The statement in the text points only to part of the evil: in many cases it is a question of great difficulty to ascertain in whom an out-standing legal estate is vested. The law has undergone several changes during the last fifty years, as to what expressions in a will are sufficient to pass an estate vested in a trustee or mortgagee. As the law stood some years ago, a conveyance would properly have been taken from an heir, in cases where it would now be manifestly necessary to apply to a devisee. These fluctuations, ruinous as they are to the security of property, are the result, not of any subtleties of conveyancers, but of the decisions of courts.

of which stands on the same footing as the expense of common recoveries: it may be proper, considering it as a tax imposed upon the public for the sake of the revenue it produces, but is not to be justified upon any other grounds.

The theory of fines is not exposed to the same objections as the theory of recoveries; and though there is obviously no virtue in the forms at present used, so as to prevent the substitution of others, still it would be improper that the effects which belong to the present forms should be given to others, unless they were such as to imply a deliberate act. Except so far as regards the diminution of the expense, and the alteration of the forms for others of more simplicity and significance, there is greater difficulty in dealing with fines than with recoveries.

Another great source of expense and trouble in the transfer of real estate, is the necessity of getting in (as it is termed),

that is, procuring conveyances of out-standing legal estates.

This occasions long and expensive inquiries, to trace the representatives of obscure or unknown persons; the inquiries are often unsuccessful, and, in the case of legal estates of inheritance, this makes an imperfection in the title. In the case of terms of years, it is often necessary to take out a limited administration, merely to enable some person to make an assignment of the term. I am not bold enough to interfere with the system of legal estates as it now exists, because a large portion of the law of the country hinges upon it; but I think that means might be devised by which all the inconveniences would be got rid of, without materially breaking in upon the theory.

Perhaps, an enactment empowering the person entitled to call for a conveyance of an out-standing legal interest, to make a transfer or conveyance of such interest by

his own act, without the concurrence of the person in whom it is vested, might not be considered too bold a step. An enactment, taking this principle as its basis, would, as far as it went, remove the evil now felt; and though it ought not to be ventured upon without infinite consideration, any ill consequences do not readily present themselves to the mind. It is by proceeding upon the same principle that the great evil of common recoveries may be got rid of. If every man who has a right to call upon the person, who, as the law now stands, is enabled to make a good tenant, were enabled to do so by his own act, much good would be done: still this would not entirely cure the evil; a new law on the subject ought to go farther, and enable every man to make a good tenant to the precipe, who, according to the intentions of the donor of the estate tail, would have had that power, if he had not been deprived of

it by accident, or some collateral proceeding, not having for its object to take away any of his powers of disposal.

There are other imperfections in the law which appear to me to be more grievous in their consequences, and more repugnant to natural justice, than those which merely occasion trouble or expense. I allude to cases in which, from the application of technical rules, the reasons for which have long since become obsolete, the lawful intentions of parties are avowedly thwarted. The most striking instance of this sort, is what is called the rule in Shelley's case; a rule by which testators and others, by using certain terms in an improper manner (but in a manner natural enough in unskilful persons), are made to confer an absolute power of disposing of real estate on persons to whom they had, by the same instrument, declared, in the most explicit terms, that they intended to give a life-estate only. This rule is so far from being

founded on any reason which is now in operation, that it has been a matter of discussion among lawyers, what the reason was upon which it was originally founded.

The technical rules which place contingent remainders in the power of the person having the next preceding vested estate of freehold, appear to me to operate with great injustice, and not to be so far interwoven with the system, but that they might be removed without any mischief.

I do not profess, in this place, to enumerate all, or nearly all the particulars in which the English laws of real property require, and in my opinion are susceptible of, improvement. I notice only some of the more obvious points. If it is fancied that the inconveniences I have pointed out, or many others which remain unnoticed, can be remedied by hasty enactments, a great mistake is made. But the thing is practicable; and, though hasty attempts would be mischievous, by leading to consequences not

foreseen, and also by bringing future improvements into disrepute, I am satisfied that a few short enactments, framed by skilful persons, would essentially benefit the public.

I shall now notice the complaint, that the complexity of titles to land is occasioned by the peculiar system of law by which real property is regulated. This is a strange mistake. The complexity in question is not occasioned, in any considerable degree, by the law, but by the permanent nature of the property. This is easily proved by the fact, that if a sum of stock be permitted to remain for thirty years vested in the names of trustees, and the equitable or beneficial interest in the mean time made the subject of sales, mortgages, settlements, and wills, at the end of the thirty years the title to the stock will be found at least as complicated as a title for the same period to land. This must be the case with all things

which are held by title, as land must always be. The difference between money and land is this: money, when received, sinks into the mass of the receiver's property; if he has received it unjustly, a personal demand exists against him, but the identity of the money is lost: the identity of land cannot be lost, and the great advantage of the latter sort of property is, that, provided there be a title to it, the property always continues, so as to be recoverable in specie.

As to other sorts of property, the identity of which is liable to be lost,—when the person entitled is deprived of the possession, he is driven to demand (not the thing itself, which is probably gone, but) a compensation, which the wrongdoer may not be in a condition to make. The advantage of property which must continue in specie, and be always to be found, over other property, is strongly proved by the anxiety to obtain a good title, instead of

relying for indemnity upon covenants, by which a man's remedy, in case of eviction, is resolved into a personal demand. These considerations, so obvious in themselves, and so important, are always present to men's minds in their dealings, but are often strangely overlooked in discussion.

It is perhaps worth remarking, that the loudest complaints, as to the difficulty in making dispositions of real estate come from parties who fancy that they possess a larger interest than they do possess, or wish to do acts which are inconsistent with the nature of their estate. Finding themselves mistaken in their notions, or thwarted in their wishes, they are very ready to lay the blame upon the law. It is natural for a party, having a limited interest in land, to wish to possess one that is greater—or to exercise powers with which the settler of the estate has not thought fit to intrust him; but this is a matter with which the law has no concern: whether

the settler of an estate has made a reasonable disposition or not, is a matter that rests with him; the province of the law is to give effect to his intentions.

I shall now point out some of the advantages which the public derives from the present system of conveyancing; and at the same time notice some singularly unfair remarks which have been made upon the subject. It has been observed, that formerly a large estate might be conveyed by a piece of parchment of the size of the palm of your hand, but that now the parchment would nearly cover the land conveyed. With the greatest deference for the distinguished person to whom this remark is attributed, it was wrong, in a temperate discussion of a subject of this nature, to introduce a ludicrous exaggeration. The truth is, that a conveyance of an estate is now of precisely the same length as a conveyance, under the same circumstances, would have been two hundred

years ago, except so far as the modern conveyance is lengthened by a more minute description of the lands conveyed. It was formerly a usual, but by no means a universal practice, to convey by some general description, such as 'all the lands of A. in the parish of ——;' or, 'all the lands of A. purchased of B.' Instead of this, it is now almost invariably the practice to insert such a description of the property, that the lands comprised in the deed may be identified from that description; and no man conversant with the subject will deny the advantages of the modern practice. I may also remark, that when the same learned person complains of the expense of modern conveyancing, and (impliedly at least) attributes the whole increase of that expense to the practice of conveyancers, there would have been some propriety in noticing, that *ad valorem* stamp-duties on sales, rising in proportion to the amount of the purchase-money till they

reach 1000*l.*, were not payable to the state in former times, as they are now.

It is, however, true, that settlements of all descriptions are not only more numerous, but much longer at present than they were formerly. The addition to their number is obviously occasioned, to a certain extent, by the advantage which the public has derived from them.

The great increase of length comes from another cause.

In former times a settlement was a simple matter. A few limitations were made, perhaps to a husband for life, with a rent charge to a wife, by way of jointure, with remainder to the first and other sons of the marriage successively in tail, with remainder to the husband in fee. To each of these limitations, the powers and privileges which the law annexes to them were left, but nothing was added. If any provision was made for younger children, it was by securing a sum out of the estate,

to be paid to all the younger children, in equal shares, if more than one; if only one, the whole was to go to that one. Now such a settlement as this would, in the present day, be made by precisely the same number of words as in former times; but if a settlement has other objects, it must contain additional provisions, and necessarily is longer. It has long been the practice to give the tenant for life a power of granting leases for an absolute term, and not merely determinable on his own life: he is, therefore, usually enabled by the settlement to grant leases for twenty-one years; but as by granting such leases upon fines, and reserving a small rent, he would obtain a benefit for himself, at the expense of the remainder man, it is necessary to specify the terms upon which such leases are to be granted. If parts of the estate are conveniently situated for building, or are likely to become so, it is proper that some one should

be enabled to grant such leases as a party undertaking to build and improve would require. This, therefore, requires another power, with a specification of the terms on which building-leases may be granted. It may be desirable to sell the estate, or to make exchanges; a power is therefore inserted for these purposes; and it is directed, that the money arising by a sale, or received for equality of exchange, shall be laid out in the purchase of other lands, which are to be settled in the same manner as the original estate. Till a proper purchase can be met with, the money is to be invested upon proper securities, which are to be varied as may be adviseable. If the unsold part of the old estate be subject to any incumbrance, the most obvious mode of discharging it is by applying part of the money arising by the sale. The object of all these provisions is to secure the property, or its equivalent, for the objects of the settlement; and, at the same

time, for many purposes, to retain all the advantages which properly belong to unsettled property only. It will hardly be denied that they are well suited to this purpose. In securing portions for younger children, it is now usual to proportion the sum to be raised to the number of the children, and the share of each is not made payable to him at all events; but a period at which it shall vest, and, perhaps, a different time at which it shall be raiseable, is appointed. In addition to this, instead of giving each younger child an equal share absolutely, a power is reserved for the parent to vary the amount of the shares; and, if he thinks proper, to exclude some altogether. It is common in settling an estate, to look beyond the immediate objects on whom the estate is settled, and to enable the intended husband to secure a jointure for a second wife, and to make provision for the issue of a future marriage. These are only a few of the provisions

common in settlements. Their great utility, the advantages which families and individuals derive from them, cannot be questioned; but it is beyond the wit of man to frame, in a proper manner, such provisions as I have referred to, (varied as they must be in every case, to suit the circumstances of the property and the wishes of the parties,) and, at the same time, to make deeds as short as they would be, if such provisions were omitted.

It has been said that there was less trouble under the old instruments, and that they answered their purposes; and it must be admitted, that a tenant for life, with only such privileges as are annexed to his estate by law, has frequently less to do, than a tenant for life with such powers as are usually given by a modern settlement; but it is no more reasonable on that account to congratulate him upon his exemption from trouble, than it would be to congratulate a cripple that he is saved

the fatigue of walking. There is no peculiar hardship in the expense occasioned by the length of these deeds: if the parties choose to forego the advantages which a settlement containing the provisions which I have noticed can alone confer, they may be omitted, and there is nothing in the law, or in the practice of modern conveyancers, to prevent the deed from being as short, as deeds of the like nature would have been centuries ago.

In other respects, also, it belongs to the settler to determine whether the instrument by which he settles his property shall be long or short. If the objects he has in view be few and simple, the deed is comparatively short: if, on the other hand, the state of his family, or of his property, renders it necessary for him to contemplate a variety of events; or, if careful habits of mind, or even caprice, lead him to make a complex settlement, the deed to carry his intentions into effect necessarily be-

comes long. There is no good reason why the owner of the property should be put under any constraint in disposing of it, however capriciously, provided he does not create interests not recognised by the law, or attempt to annex qualities to estates which the law has determined to be inconsistent with their nature: as to any hardship in the case, that is out of the question; the expense of the instrument, so far as the expense depends upon the length, as I before observed, rests entirely with the party himself.

If we limit our ideas of a dwelling-house to the mere object of excluding the sun, the wind, and the rain, all that is required for that purpose is four walls and a roof: but if we extend our notions, and look for comfort and convenience, then the house must be divided into several apartments allotted to different domestic purposes; there must be contrivances to secure cleanliness, and to exclude

damp, and all the other details follow which go to the completing of a modern dwelling-house. In the same way a settlement, which simply marks the line of devolution in which the entire estate is to go, leaving to each interest only those incidents which the law annexes to it, is as simple a matter as the four walls and the roof: but if the settlement is made to secure to the parties the ability of effecting a variety of collateral purposes; in short, if it is to answer all the purposes usually answered by modern settlements, a short and simple instrument can no more effect all this, than four walls and a roof can give all the comfort and convenience of a complete modern residence.

It may be remarked in this place, that, in England, so large a proportion of the land is in settlement, that if the modern system of conveyancing had not introduced the practice of giving powers of selling and exchanging settled estates, it is difficult to say how far the community might

have been affected by so much land being unsaleable. This is a consideration, of the importance of which I do not profess to speak; but it appears to me to be entitled to some weight.

The above observations point more particularly to settlements; but the same considerations apply to all trust-deeds, and all contracts and arrangements which are to be authenticated by legal instruments. If the objects of the trust-deed be multifarious, or, if the contract be complicated, the instrument for carrying the intentions of the parties into effect must be proportionably long, if it is to perform its office in a proper manner. If there be any legislative magic by which entangled transactions can be made simple, or any power by which men can be prevented from entering into complicated arrangements, then deeds of this description may be made shorter; but I see no other means by which any important saving in this respect can be effected.

It is generally supposed that the great length of deeds relating to real estates is occasioned by the law, but this is a mistake; the length is not in any considerable degree occasioned by the law, but by the various and complex objects aimed at by the deed, or by the necessity of making a long statement of facts by way of recital, before the views of the parties can be understood. That no peculiarity of the laws of real property occasions the length, is clearly shown by the fact, that a settlement, or will of personal estate, is generally as long an instrument as a settlement or will of land. A settlement of real estate contains some provisions which are inserted on account, not of the law, but of the nature of the thing settled: such as powers of leasing, which have no application to personal estate; and, on the other hand, personal settlements have provisions of their own,—such as powers to invest the money in the purchase of real

estate, without depriving the property of its original character of personal estate. The provisions in both cases arise, not from the law, but from the nature of the property, and the agreement or wishes of the parties.

It has, however, been urged, that a needless verbosity is used in legal instruments; and it is undeniable that instances of this sort occur; and it can never be otherwise, until all men are gifted with precisely the same faculties, and the same quantity of skill. But it is also to be borne in mind, that it is impossible to exclude all ambiguity without employing a particularity of expression, which must seem unnecessary to those who have not practically felt its importance.

In languages such as the Greek and Latin, where the parts of the verbs, and the cases of nouns, are distinguished by the termination, punctuation may be dispensed with, and no ambiguity follow from the

omission; but the English language, as usually written, would not, without the aid of punctuation, express ideas with sufficient certainty, even for ordinary purposes, far less for the purposes of conveyancing. It is considered, that punctuation is too minute a matter, and too capriciously used, to be relied upon for expressing men's meaning with certainty, when the possession of property and the validity of contracts depend upon the meaning being clearly understood. A system of language has therefore been invented, where punctuation is dispensed with; and by the arrangement of words, and of the branches of sentences, ambiguity is excluded to a degree which could never be attained merely by the use of punctuation. This system of language, which perfectly answers its purposes, when properly used, leads to a circuity of expression which seems strange and affected to unpractised persons, but is, in fact, resorted to because the same ends cannot be attained by other means.

It has also been objected, that, in modern deeds, clauses and provisions which are altogether unnecessary are often introduced; but here again, after admitting that an over-anxiety may sometimes occasion the introduction of clauses which may be safely dispensed with, it is to be observed, that when the mind is intently given to a subject, the necessity of many clauses is clearly seen, which, to a cursory reader, will appear uncalled for. If the particular case for calling the clause into action afterwards occur, or if the instrument become the subject of litigation, the parties will find the advantage of provisions, the necessity of which was perhaps before but little obvious. It may be safely asserted, that this is a subject upon which it is impossible to legislate with effect.

If it should be conceded that the public reaps advantages from the present system of conveyancing, but be urged that the same benefits ought to be obtained at a

cheaper rate,—I submit the following remarks to the consideration of the reader:—

If the stamp-duties paid to Government, and the cost of suffering recoveries, levying fines, and taking out limited administrations, were taken away, the expense of conveyancing would be diminished at least one-half. Whether the taxes which the state lays upon the community are imposed for sufficient reasons, is a question with which I do not interfere; but while the expenses of conveyancing are spoken of, and these taxes never once adverted to, it is impossible not to see that a delusion is practised on the public mind. All these taxes are paid by the solicitor, swell the amount of his bill, and contribute to the notion of its exorbitancy.

As to the profits derived by practising-lawyers from conveyancing business being excessive, the thing is hardly possible. Of all the professions, that of conveyancing is the least protected by monopoly. An

attorney only can levy fines and suffer recoveries; but every other part of the business may be done, not only by all barristers, attorneys, and solicitors, but by every person who chooses to enter himself at one of the Inns of Court, and to pay an annual tax, something less, I believe, in amount, than that which is paid for a hawker's licence. In the multitude of persons whom this state of things naturally engages in the occupation, it is absurd to suppose that there are not many who are willing to do the business as cheaply as in the nature of things it can be done. In fact there are plenty of such persons; and if men will not employ them, but think it better to pay more highly for greater skill than they give the under-paid practitioners credit for possessing, they must abide by the consequences of their own election. Besides all this, if the bill of a solicitor, or of any other person, for conveyancing business be too great, it is open to be

disputed in the same manner as any other exorbitant demand.

I have ventured, Sir, to submit these observations to you, because I think that a new code of laws of real property would produce great confusion, and be of mischievous consequences. *Ignoti nulla cupido*, is an old maxim which these times have contradicted: we desire a code of laws, while we have no experience, no knowledge of its operation. The undertaking would, at least, be attended with some risk; and that risk ought not to be incurred, unless there be an indispensable necessity. I have noticed some of the evils of the existing system, because I believe that its blemishes are capable of being removed, and the country has a right to expect that they should be removed. If this task be temperately and honestly undertaken, and performed with competent skill, I am persuaded that a great service will be done to the country,

without incurring any perceptible portion of the evils which more extensive changes would lead to. The blemishes ought to be removed, not only because a new code would be a great evil, but because the present system is substantially excellent, and well adapted for all its purposes; and, above all, has the advantage of being well known and understood.

I have noticed, that the success of your efforts will probably not answer the public expectations, because those expectations are grounded on mistaken notions of the real causes of the expense of conveyancing business. I have also ventured to suggest, that the greater expense of conveyancing business in the present day, so far as the practising lawyers are concerned in that expense, is not a mere burthen without any return, but that an equivalent is received, which the public would not willingly forego, in the more elaborate manner in which business of that nature is now done.

I venture to hope, that it will not be inferred, because this Letter is hastily written, that the opinions expressed in it have been hastily adopted; the truth is, that though the Letter has been written with haste, as will appear, I fear, too obviously, the opinions it contains have been formed with much more deliberation.

I am, Sir,

Your most obedient,

humble servant,

J. H. CHRISTIE.

Lincoln's Inn, April, 1827.

LONDON:
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Stamford-street.

A LETTER

TO

THE RIGHT HONORABLE

ROBERT PEEL, M.P.

ON THE

EFFECT AND OBJECT OF HIS ALTERATION IN THE LAW OF ENGLAND,

WITH

REFERENCE TO THE EXTENSION OF THE JURISDICTION

OF

Justices of the Peace.

BY CHARLES BIRD,

BARRISTER AT LAW.

Plymouth:

PRINTED AND PUBLISHED BY EDWARD NETTLETON,

(Printer to H.R.H. the Duke of Clarence)

WHIMPLE-STREET.

1827.

*** *The first Letter to the Right Honorable Robert Peel, M.P. has been added by the Publisher as an Appendix to the present, that an opportunity of perusal may be afforded such of the Public as have not seen it in earlier circulation.*

TO

THE RIGHT HONORABLE

ROBERT PEEL, M.P.

Gascoyne Place, Plymouth, Devon,
5th December, 1827.

SIR,

SINCE my last Address to you, I have been informed, that you are not deeply versed in the Laws of your Country; this, I must believe, or conclude, that at the moment when you framed the second Section of your Act (as it is commonly called) which abolished the Common Law distinction between Grand Larceny and Petty Larceny, you knew that the Act of Parliament which passed in the Eleventh Year of the reign of Henry the Seventh, extending the *summary Jurisdiction of Justices of the Peace* to all offences *short of Felony*, brought Empson and Dudley to the block; and that so intolerable

the consequent oppressions, that its repeal is recorded in our Statute Book, as one amongst the mild measures of his Successor's Reign; and that you also knew that Sir Edward Coke afterwards referred to it in his Institute on the Laws of England, not as a model for imitation, but as a *Beacon* to warn future generations *of the danger of altering the Common Law*; but, Sir, as it is possible that you may never have consulted this great legal Authority, I will give you his very words. Alluding to the twenty-ninth chapter of Magna Charta, which confirms to the People of England their right to *Trial by Jury*, he says:

"Against this *ancient* and *fundamental Law*, and "*in the Face thereof*, I find an Act of Parliament made, "that as well Justices of Assize as *Justices of the Peace* "(without any finding or Presentment by Twelve Men) "upon a bare Information for the King before them made, "should have Power and Authority by their *Discretions* "to hear and determine all Offences and Contempts com- "mitted or done by any Person or Persons, against the "Form, Ordinance, and Effect of any Statute made and not "repealed, &c. by Colour of which Act, *shaking this* "*fundamental Law*, it is not credible what horrible "Oppressions, and Exactions to the undoing of infinite "Numbers of People, were committed by Sir Richard "Empson, Knight, and Dudley, being Justices of Peace "throughout England; and upon this unjust and injurious

" Act (as commonly in like Cases it falleth out) a new " Office was erected, and they made Masters of the King's " Forfeitures."

" But at the Parliament holden in the first Year of " Henry the Eighth, this Act of Henry the Seventh is " recited, and made void, and repealed; and the Reason " thereof is yielded; for that by Force of the said Act, " it was manifestly known, that many sinister and crafty, " feigned and forged Informations, had been pursued " against divers of the King's Subjects, to their great " Damage and wrongful Vexation; and the fearful Suc- " cess hereof, and the fearful Ends of these two " Oppressors, *should deter others from committing the* " *like*, and *should admonish Parliaments, that instead of* " *this ordinary and precious Trial by the Law of the* " *Land*, they bring not in *absolute and partial Trials by* " *Discretion.*"

It is possible, Sir, that you may have been unacquainted with this terrible example, which appears not only in the learned Judges excellent Work, but also in the Statute Book of the Realm; but can you have been ignorant, that only sixty years ago, the elegant Commentator on the Laws of England, Sir William Blackstone, expressed his fearful apprehensions of the dangerous consequences of further extending *summary Jurisdictions*, not only in *criminal* but likewise in *civil cases?* After alluding to the summary nature of all trials of offences, as

[illegible] contrary to the Laws of *Excise* and other branches of the *Revenue*, upon which he says, "we shall find that "the Power of the Officers of the Crown *over the property* "*of the People* is increased to a very formidable height," he thus proceeds:—

"Another Branch of summary Proceedings is "that before *Justices of the Peace*, in order to inflict "divers petty pecuniary Mulcts and corporal Penal- "ties denounced by Act of Parliament for many "disorderly Offences; such as common Swearing, Drun- "kenness, Vagrancy, Idleness, and a vast variety of "others, which used to be formerly punished by *a Verdict* "*of a Jury* in the Court Leet. This change in the "Administration of Justice hath, however, had some "mischievous Effects; as 1st.—The almost entire Disuse "and Contempt of the Court Leet, and Sheriff's Tourn, "the King's ancient Court of Common-Law, *formerly* "*much revered and respected*. 2.—The burthensome "Increase of the Business of a *Justice of the Peace*, "which discourages so many Gentlemen of Rank and "Character from acting in the Commission, from "an Apprehension, that the Duty of the Office would "take up too much of that Time, which they are unwil- "ling to spare from the necessary Concerns of their "Families, the Improvement of their Understandings, and "their Engagements in other Services of the Public.— "Though if *all* Gentlemen of Fortune had it both in their

"Power, and Inclinations, to act in this Capacity, the Business of a Justice of the Peace would be more divided, and fall the less heavy on Individuals; which would remove, what in the present Scarcity of Magistrates, is really an objection so formidable, that the Country is greatly obliged to any Gentleman of Figure, who will undertake to perform that Duty, which, in Consequence of his Rank in Life, he owes more peculiarly to his Country. However, this Backwardness to act as Magistrates, arising greatly from *this Increase of summary Jurisdiction*, is productive of a third Mischief; which is, that this Trust, when slighted by Gentlemen, falls of course into the Hands of those, who are not so; *but the mere Tools of Office*: and then the extensive Power of *a Justice of the Peace*, which even in the Hands of Men of Honour, is highly formidable, will be prostituted to mean and scandalous Purposes, to the low Ends of selfish Ambition, Avarice, or personal Resentment. From these ill Consequences, we may collect the prudent *Foresight* of our *ancient Lawgivers*, who suffered neither the *Property* nor the *Punishment* of the Subject to be determined by the Opinion of any *one or two Men*; and we may also observe *the necessity of not deviating any further from our ancient Constitution*; by ordaining new Penalties to be inflicted upon *summary Convictions*."—4 B. Com. 281, 14 Edn. 1 "It (meaning this summary Jurisdiction

(Justices of the Peace) "has of late been so far "extended, as, *if a Check be not timely given*, to threaten "the Disuse of our admirable and truly English Trial by "Jury, *unless only in Capital Cases*.—4 Bla. Com. 280.

Forget not, Sir, these last words "*unless only in capital Cases*," for they conduce most essentially to the development of the object of the second Section of your Act! With respect to the extension of this Jurisdiction, even in *civil* cases, he says:

"It is to be feared, that the general Remedy, which "of late hath been principally applied to cure the Incon- "venience arising from the Disuse of the ancient County "and Hundred Courts, may itself be attended in Time "with very ill Consequences; as the Method of proceed- "ing therein is entirely *in Derogation of the Common "Law*; as their discretionary Powers create a petty "Tyranny in a Set of standing Commissioners; and as "the *Disuse of Trial by Jury* may tend to estrange the "Minds of the People from *that valuable Prerogative of "Englishmen, which has already been more than suffi- "ciently excluded in many Instances*. 3 Bla. Com. 82.

Again, for the very purpose of *deterring future Legislators from invading the Common Law*, he says: "It hath been "an ancient Observation in the Laws of England, that "wherever a standing Rule of Law, of which the Reason, "perhaps, could not be remembered or discerned, hath "been wantonly broken in upon by Statutes or new

"Resolutions, the Wisdom of the Rule hath in the End
"appeared from the Inconveniences that have followed
"*the Innovation.*

The standing Rule of Law, Sir, which your Act has broken in upon, was the immemorial Law of England, *even at the date of Magna Charta.* Its reason and its wisdom were so well remembered and discerned, that it had survived the cruel invasions of the Danes, and even the Conquest itself, and so endeared was it to our forefathers, that they, at the risk of their property and their lives, sword in hand, demanded and obtained its recognition and confirmation; and so jealous were their descendants of the least innovation of it, that in the course of a very few succeeding reigns there are no less than thirty instances of its confirmation. It has for nearly *six hundred years* since that period survived the political convulsions of our Country; and scarcely has there been a Writer on our Law, or a Judge upon the Bench, who has not admitted, nay, even eulogized its excellence and perfection. Of course I must except those, who attempted to confer upon us the blessings of the *Civil Law,* to whom our Ancestors made this noble reply: "*that they would* "*not change the Laws of England, which had hitherto* "*been used and approved.*" But for their patriotic opposition to its introduction, England would not now boast of the pre-eminence of her civil and religious institutions over those of the other nations of Europe. Would to

God, Sir, that the People of England had made to you a similar reply!

On the subject of *Trial by Jury* the learned Commentator says: "that it is that *Trial by the Peers of every Englishman*, which, as the Grand Bulwark of his Liberties, is secured to him by the Great Charter.—*No Freeman shall be taken, or imprisoned, or be disseised of his Freehold or his Liberties or free Customs, or be outlawed or exiled, or in any otherwise destroyed, nor will we pass upon him nor condemn him, unless by the lawful Judgment of his Peers, or by the Law of the Land.*"

Perhaps you, Sir, who are a Legislator, know that these latter words "*by the Law of the Land*" mean by *Indictment or Presentment of good and lawful Men.* The Antiquity and Excellence says he of this Trial for the settling of *civil* Property has before been explained at large; and it will hold much stronger in *criminal* Cases; since in times of Difficulty and Danger, more is to be apprehended from the Violence and Partiality of Judges appointed by the Crown in Suits between *the King* and the *Subject*, than in Disputes between *one Individual and another* to settle the Metes and Boundaries of private Property. Our Law "has therefore wisely placed this strong and two-fold Barrier, *of a Presentment and a Trial by Jury, between the Liberties of the People and the Prerogatives of the*

"Crown. It was necessary, for preserving the admir-
" able Balance of our Constitution, to vest the executive
" Power of the Laws in the Prince; and yet this Power
" may be dangerous and destructive to that very Consti-
" tution, if exerted without Check or Controul by Justices
" of Oyer and Terminer occasionally named by the Crown;
" who might then, as in France or Turkey, imprison,
" dispatch, or exile any Man, that was obnoxious to the
" Government, by an instant Declaration, that such is
" their Will and Pleasure; but the *Founders of the*
" *English Law* have, with excellent *Forecast*, contrived,
" that no Man should be called to answer to the King for any
" capital Crime, unless upon the preparatory Accusation
" of twelve, or more, of his Fellow-Subjects, the
" Grand Jury; and that the Truth of every Accusation,
" whether preferred in the shape of an Indictment, Infor-
" mation, or Appeal, should afterwards be confirmed by
" the unanimous Suffrage of twelve of his equals or Neigh-
" bours, indifferently chosen, and superior to all Sus-
" picion. So that the Liberties of England cannot but
" subsist, so long as this *Palladium* remains sacred and
" inviolate; not only from all *open Attacks*, (which none
" will be so hardy as to make) but also from all *secret*
" *Machinations*, which may sap and undermine it, by in-
" troducing new and arbitrary Methods of Trial, by
" *Justices of the Peace*, Commissioners of Revenue, and
" Courts of Conscience. And however *convenient* these

" may appear at first (as doubtless all arbitrary Powers,
" well executed, are the most convenient) yet let it be
" again remembered, that Delays, and little Inconve-
" niences in the Forms of Justice, are the Price that all
" free Nations must pay for their Liberty, in more sub-
" stantial Matters; that *these Inroads* upon the sacred
" Bulwark of the Nation, *are fundamentally opposite to*
" *the Spirit of our Constitution;* and that though begun
" in Trifles, the Precedent may gradually increase and
" spread, to the utter Disuse of Juries in Questions of
" the most momentous Concern." 4 Bla. Com. 348.

" *Trial by Jury* ever has been, and I trust, ever will
" be, looked upon as the Glory of the English Law; and
" if it has so great an Advantage over others in regulat-
" ing *civil* Property, how much must that Advantage be
" heightened, when it is applied to *criminal* Cases? It
" is the most transcendent Privilege, which any Subject
" can enjoy, or wish for, that he cannot be affected,
" either *in his Property, his Liberty, or his Person,* but by
" the unanimous Consent of twelve of his Neighbours
" and Equals. A Constitution, that I may venture to
" affirm has, under Providence, secured the just Liberties
" of this Nation, for a long Succession of Ages, and
" therefore a celebrated French Writer (Montesquieu)
" who concludes, that because Rome, Sparta, and Car-
" thage have lost their Liberties, therefore those of
" England in time must perish; should have recollected

" that Rome, Sparta, and Carthage, at the time when " their Liberties were lost, *were Strangers to Trial by* " *Jury*.

" Great as this Eulogium may seem, it is no more " than this admirable Constitution, *when traced to its* " *Principles*, will be found in sober reason to deserve.— " The impartial Administration of Justice, which secures " both our Persons, and our Properties, is the great End " of civil Society; but if that be entirely entrusted to the " Magistracy, a select Body of Men, and those generally " selected by the Prince, or such as enjoy the highest " Offices in the State, their Decisions, *in spite of their own* " *natural Integrity*, will have frequently an involuntary " Bias towards those of their own Rank and Dignity; it " is not to be expected from human Nature, that *the few* " should be always attentive to the Interests and Good of " *the many*. On the other hand, if the Power of Judi- " cature were placed at random in the Hands of the " Multitude, their Decisions would be wild and capricious, " and a new Rule of Action would be every Day esta- " blished in our Courts. It is wisely therefore ordered, " that the Principles and Axioms of Law, which are " general Propositions, flowing from abstracted Reason, " and not accommodated to Times or to Men, should be de- " posited in the Breasts of the Judges, to be occasionally " applied to such Facts, as come properly ascertained " before them. For here Partiality can have little Scope:

"the Law is well known, and *is the same for all Ranks*
"*and Degrees*; it follows as a regular Conclusion from
"the Premises of Fact pre-established. But in settling
"and adjusting a Question of Fact, when intrusted *to any*
"*single Magistrate*, *Partiality* and *Injustice* have *an*
"*ample Field to range in*; either by boldly asserting that
"to be proved, which is not so, or by more artfully sup-
"pressing some Circumstances, stretching and warping
"others, and distinguishing away the remainder. Here
"therefore a competent Number of sensible and upright
"Jurymen, chosen by Lot from among those of the mid-
"dle Rank, will be found the best Investigators of Truth,
"and the surest Guardians of public Justice. For the
"most powerful Individual in the State will be cautious
"of committing any flagrant Invasion of another's Right,
"when he knows that the Fact of his Oppression must
"be examined and decided by twelve indifferent Men,
"*not appointed till the Hour of Trial*; and that, when
"once the Fact is ascertained, the Law must of Course
"redress it. This therefore preserves in the Hands
"of the People that Share, which they ought to have
"in the Administration of public Justice, and prevents
"the Encroachments of the more powerful and wealthy
"Citizens. *Every new Tribunal erected for the Decision*
"*of Facts, without the Intervention of a Jury* (whether
"*composed of Justices of the Peace, Commissioners of the*
"*Revenue, Judges of a Court of Conscience, or any other*

" *standing Magistrates*) *is a Step towards establishing*
" *Aristocracy, the most oppressive of absolute Govern-*
" *ments.* The feodal System, which, for the sake of
" military Subordination, pursued an aristocratical Plan
" in all its Arrangements of Property, had been intoler-
" able in Times of Peace, had it not been *wisely counter-*
" *poised* by that Privilege so universally diffused through
" every Part of it, the Trial by the feodal Peers. And in
" every Country on the Continent, as the Trial by the
" Peers has been gradually disused, so the Nobles have
" increased in Power, till the State has been torn to
" Pieces by rival Factions, and Oligarchy in Effect has
" been established, though under the Shadow of legal
" Government; unless *where the miserable Commons*
" *have taken Shelter under absolute Monarchy, as the*
" *lighter Evil of the two.* And particularly it is a Cir-
" cumstance well worthy an Englishman's Observation,
" that in Sweden the *Trial by Jury*, that Bulwark of
" northern Liberty, which continued in its full Vigour so
" lately as the Middle of the last Century, is now fallen
" into Disuse; and that there, though the legal Power is
" in no Country so closely limited, *yet the Liberties of the*
" *Commons are extinguished*, and the Government is
" degenerated into a mere Aristocracy. It is therefore
" upon the whole, *a Duty every Man owes to his Country,*
" *his Friend his Posterity, and himself*, to maintain, to
" the utmost of his Power this valuable Constitution in

" all its Rights; to restore it to its ancient Dignity if at " all impaired by the different value of Property, or other- " wise deviated from its first Institution; to amend it " wherever it was defective: *and above all to guard with* " *the most jealous Circumspection against the Introduc-* " *tion of new and arbitrary Methods of Trial*, which " under a Variety of *plausible Pretences*, may in Time " imperceptibly undermine this best Preservative of " English Liberty."—3 Bla. Com. 378.

The question between us, Sir, is one of fearful, of awful import; it vitally concerns even the humblest individual of the State; upon its issue, perhaps, depend the future Liberties of our Country. To enable every man truly to appreciate your merit as a Legislator, and to pass judgment between us, I have quoted largely from Authorities long recognized, respected, and revered by the first Lawyers of the age. Sir Edward Coke was Lord Chief Justice of the Common Pleas, and afterwards Lord Chief Justice of the King's Bench; Sir William Blackstone was a Judge of the Court of Common Pleas. They have long since passed the portal of Eternity, and have left behind them monuments of legal industry and knowledge, and of loyal attachment to our Constitution. Their names are recorded in the archives of their Country, and will be transmitted to Posterity, as her benefactors, as long as civil Freedom pours her blessings on mankind. Should it be possible, that there can be amongst the venal, and

the vile, one man so lost to every sense of gratitude, honour, justice, and truth, as to even insinuate aught against the loyalty of the immortal Commentator, I would remind him, that in the year 1758 his Commentaries had gained such universal applause, that they were thought worthy to form part of the education of our late Sovereign, George the Third, then Prince of Wales, who (to his eternal honour be it remembered) ordered a handsome gratuity to be presented to the Author. When I lately read the eloquent exhortation of The Lord High Admiral of England, the Heir presumptive to the British Throne, to his fellow subjects at Portsmouth, to defend our *civi* rights, my heart beat proudly with a patriot throb, and I recorded an oath in Heaven, that "If my Country mus "fall, could I avert it, she should not be her own "Destroyer."

By the Common Law, *Theft* of the *personal* good of another, of the value of *twelve pence or under*, wa called *Petty Larceny;* if the goods stolen were of *greate value*, is was called *Grand Larceny;* the first was punish able with imprisonment and whipping, the second wit death. In each case the offender committed *Felony;* an it was so called, not because the goods stolen were *of greater or lesser value*, but because by the *conviction* i both instances, *his goods and chattles*, and by the *judg ment* in the second, *his lands and tenements* were *forfeite* to the King. It afterwards became necessary to exten

the protection of the Law to many species of property, not then considered to be of a *personal* nature; such as ore of mines, growing timber, trees, shrubs, underwood, roots, fruits, &c. attached to the freehold; bonds, bills, notes, dogs, &c. which were considered of no intrinsic value; unreclaimed beasts, as deer, hares, &c. in which no one was considered to have a *property*, either *absolute* or *qualified;* hence arose the distinction between Larceny at Common Law, and Larceny by Statute. To this source may be traced the origin of those false principles which are the prominent features of modern Legislation. Had the Legislators of that day taken the Common Law as their guide, they would naturally have made the latter subject to all the incidents of the former; for this plain and obvious reason: that the consequences, with reference to the *character* of the accused, were alike in either case. He was equally *a thief*, whether he stole *a loaf of bread*, or *a post, pole, or rail, not before severed from the freehold.* The very *reputation* of being such operated as a species of civil excommunication; it excluded him from the service, communion, and confidence of his neighbours; he was branded with infamy in the public estimation, and when a Larceny was committed in his neighbourhood, the eye of Suspicion scowled on him. If the article stolen was of *some value, however minute it may be* he was entitled to a *Trial by Jury.* Why? Because *his character* (which the Constitution contemplated as equally

dear to the poor man as to the rich). *was at issue.*—Modern Legislators appear to me, in their anxiety to protect *Property*, not only to have overlooked the *chartered rights* of the people, but to have wholly lost sight of the value of *Reputation*: that important distinction between Infamy in *Fact*, and Infamy in *Law*, which Lawgivers should never forget, could not have occurred to their minds.

The first Act which I have found giving to *Justices of the Peace* a summary Jurisdiction in *Larceny* is that of the 43 Eliz. chap. 7: against *robbing* Orchards, &c. which expressly confines it to offences *which were not Felony by the Laws of this Realm.* It is very probable that the acute and just observer of men and manners, our great Dramatic Bard, alluded to this *vital innovation* on the Law, in the following lines, written very soon after:

> "Good name in man and woman—dear, my Lord,
> "Is the immediate jewel of their souls:
> "Who steals my *purse*, steals trash; 'tis something, nothing;
> "'Twas mine, 'tis his, and has been slave to thousands;
> "But he that filches from me my *good name*
> "Robs me of that which not enriches him,
> "And makes me poor indeed.

What is it to the poor man, whether Larceny be *Felony* or not? To him it can be of little, very little import.—What goods and chattels, lands and tenements, has he to

forfeit to his King? His *character* is his goods, his chattels, his lands, his tenements, *his bread.*

"You take his life,
"When you do take the means whereby he lives."

Other dangerous deviations from the ancient rules of Law are to be found since that period: 1st.—"*That of constituting the Offence, Felony or not, according to the Value of the Article stolen.*" Is this, Sir, to be defended upon principle? If so, where do you find it?

— I cannot find it; 'tis not in the Charter.

As I have before shewn, the *value* was material only with reference to the *punishment*; now it is made a *pretext* for depriving the subject of his *Trial by his Peers.* 2ndly.—In some instances it now depends on the *number* of previous convictions by *Justices of the Peace.* If, Sir, three offences constitute *Felony*, and the offender is tried and convicted *for the two first* before *a summary Tribunal*, and those convictions are given in evidence *on the third trial*, is he not *in fact* tried for Felony *otherwise than by a Jury of his Country?* Are not *all the parts* equal to *the whole?* Would you sacrifice a man at this shrine of Subtlety and Sophistry, and then call it *Justice?* Look at the numerous instances in your Act, by which power is vested in one or two Magistrates to hear and determine Larcenies. Can any man's character

be now safe when the kingdom teems with Associations offering *rewards* on the conviction of offenders? Do they not open the flood-gates of Pride, Prejudice, Malice, and Revenge, and expose to all their fury that class of the community, whose poverty precludes them from all power of obtaining Revision of Error, or Redress of Injury?— For a Grand Jury, a Petty Jury, and a Judge *experienced in the Laws of his Country*, all under the most solemn obligation to act justly, are substituted one or two individuals, whose habits of life afford not even a probable presumption that they possess one judicial qualification.— Can you call this *amending the Laws of England*?— England and England's Judges must feel deeply indebted to you for such a tribute to their worth, wisdom, and integrity. Insecure indeed, must be the state of society, when the *character* and *personal safety* of every member of it depend on the fallible judgment of *one* of his fellow men, who may be his open, or, which is worse, his secret enemy. You may say, "I found these laws in the Statute Book and consolidated them:" that, Sir, is true with respect to most of them; but, it is equally true, that you procured their repeal and likewise their *re-enactment*. This is the title of your Act:—"An Act for consolidating and *amending* "the Laws in England relative to Larceny and other "Offences connected therewith." One of your avowed objects was to *amend* the Law. How is it, Sir, that

instead of *amending* this alarming and rapidly increasing Code, which, according to Sir Edward Coke, is "*against "the ancient and fundamental Law and in the Face "thereof,*" and which Lord Holt and Sir William Blackstone declared to be "*fundamentally opposite to the Spirit of our Constitution,*" which no Lawyer in the present day will be hardy enough to deny, you procure the legislative sanction not only for its *extension*, but likewise for its *perpetuity?*

By the second Section of your Act it is enacted; "That the distinction between *Grand Larceny* and *Petty* "*Larceny* shall be abolished, and every Larceny, *what-* "*ever be the Value of the Property stolen*, shall be deemed "to be of the same Nature, and shall be subject to the "same Incidents in all Respects as Grand Larceny was "*before the commencement of this Act;* and every Court, "whose Power as to the Trial of Larceny was before the "Commencement of this Act limited to Petty Larceny, "shall have Power to try every Case of Larceny the "Punishment of which cannot exceed the Power herein- "after mentioned for simple Larceny; and also to try all "*Accessaries* to such Larceny."

Here, Sir, we see a distinction which has existed at least *one thousand years;* a distinction founded in wisdom and experience, in one rash moment, swept away. Will you say that your object is *to soften the severity of the Common Law?*

"*Quicquid id est; timeo Danäos et dona ferentes.*"

If Mercy be your plea, would you have punished with *seven years transportation* the receiver of stolen goods of *one penny value*, which before was both by the Common and Statute Law punishable only with fine, imprisonment, or whipping? When transportation was first extended to *Petty Larceny*, one reason for it avowed by the Legislature was "*that the Colonies were in want of Servants.*" Perhaps, Sir, the Emigration Committee may suggest another reason, *nearer home.* I know of but one principle upon which it can be justified, and that is "when it becomes necessary for the preservation of our property."

The Common Law has been charged with being too rigorous, because, the crime of Grand Larceny was *punishable* with *death.* Would you thence infer that all offenders suffered death? Does not the severity of a law consist more, Sir, in its administration and execution, than in its enactment? What! if Posterity tried our present Code by such a test?—What! if they inferred that in all cases now made capital, the offender suffered death?—They would turn with disgust from the sanguinary catalogue, and consider us rather as murderers than men. You may say, that they could not possibly make such a mistake, because, they would see how often such a punishment is commuted for transportation. Read, Sir, the history of your Country with attention, and you will find that our ancestors were not less humane in that respect

than their descendants, who have even accused them of carrying the principle of *commutation too far?* The eyes of your Country were fixed on you, as the improver of her Criminal Code. You were in the path to Fame, to Immortality;

"What tempting aspect drew you from the road?"

No Lawyer yourself, were you deceived and mislead by those who are? If so, proclaim their names, that they with you may

"Pursue the triumph, and partake the gale."

None but those who possess some little knowledge of the History and Laws of their Country, can distinctly see the effect and object of this, to others apparently an unimportant enactment. When I look back to the fatal attempt made in the reign of Henry the Seventh, to extend the summary Jurisdiction of *Justices of the Peace* to all offences *short of Felony;* when I consider that succeeding Legislators have extended it to *Larcenies*, which, *even then*, was not attempted; that scarcely a Session of Parliament has been holden during the last century, in which it has not received a fearful accession of power; that the line of demarkation is, *as it then was*, drawn precisely between *Felony* and *Misdemeanour;* and that the Legislature (now says) "that to extend such power to *Larcenies* we will call them *Felonies* no more," for

such is my construction of your Act, it is almost impossible that a *Lawyer* can mistake the object: but when in addition to all these considerations I find, that the immortal Commentator's love of his Country inspired him with the spirit of *prophecy;* that he foresaw and foretold *that such an attempt would be made,* it is, Sir, to me as clear as if it had been written with a sun-beam, even in the preamble of your Act. This is his prophecy:—"It" (meaning this jurisdiction) "has of late" (*sixty years ago, Sir,*) "been so far extended as if *a timely* "*Check he not given to* threaten the Disuse of our admi-"rable and truly English Trial by Jury, *unless in capital* "*Cases.*" That truly great unknown, Junius, exhorted and conjured his countrymen never to suffer an invasion of their political Constitution, however minute the instance may appear, to pass by, without a determined, persevering resistance. "One precedent" (said he) "creates another. "They soon accumulate and constitute Law. What "yesterday was Fact, to-day is Doctrine. Examples "are supposed to justify the most dangerous Measures, "and where they do not *suit exactly,* the Defect is sup-"plied by *Analogy.*"

Looking to the great consummation of your *glorious work,* you need not fear that you will be driven to *analogy* for its justification. The example *will suit exactly.* For if a reason for either could be drawn from our Constitution,

it would apply equally well to the extension of this Jurisdiction to *Larcenies at Common Law as to Larcenies by Statute*. Let me not be misunderstood in quoting the language of this great man. *By determined persevering resistance* he meant, opposition *by the legal and constitutional mode of petition*. He well knew this important truth "that the man who, whilst the Throne and the doors "of Parliament are opened to the petitions of the People, "resorts to other means of obtaining redress, is not the "*defender* of social order, but its *disturber*—not the "*friend* of, but a *traitor* to his Country."

"I have heard this alteration of the Common Law attempted to be justified under a pretence that has not even plausibility to recommend it; "*that it will abridge the labour of the Judges.*" This, indeed, is the age of invention. I have seen and read of many machines for the abridgment of human labour, but this surpasses all.—What would you, to abridge the labour of *twelve men*, abridge the liberties of *millions?* To say that they would accept of ease obtained by such a sacrifice would be, I hope, an atrocious calumny on that venerable body of men, whom I was taught to regard, and do regard next to *Trial by Jury* and *the Liberty of the Press*, as the sheet anchor of the State. We have now no Henry the Seventh on the Throne of England; and I would fearlessly stake my life on it, that the effect and object of

this Act were never explained, nor its machinery unmasked, to our Monarch.

"Had Erskine lived, though stripped of power,
A watchman on the lonely tower,
His thrilling trump had roused the land,
When fraud or danger was at hand:
* * ** * * * *
His trumpet's silver sound was still
The warder silent on the hill."

There is another substantial, fatal objection to this Jurisdiction, which its boldest advocates can never surmount. They cannot possibly deny "*that every man is entitled to be tried according to the Law of the Land.*" In the Law Reports of the last fifty years you will find, Sir, reiterated declarations of our Judges "that it is their bounden duty to preserve steady and uniform *those rules of evidence which are the safeguards of our laws, our liberties, and our property.*" Formerly, twenty years study was considered necessary to qualify a person for the judgment seat; now, *as if by magic*, a man of sufficient estate is converted into a Judge. His name being in the Commission of the Peace, he takes out a writ, called "*Dedimus Potestatem.*" *Power* I admit it gives, but nothing else. Thus upon a presumption notoriously opposed to fact, he receives a license to try, fine, imprison, and transport his equals; if required, he must prove his qualification *by estate;* is there no other *qualification* necessary? If not; why are the Lawyers and Judges

of England doomed to ceaseless toil and care? When Justices of the *Peace* were first appointed, they were so called because they were its *Conservators* only. Had any man then foretold their *present power*, he would have been treated as a madman. The *Star-chamber* never possessed, nor I believe ever arrogated to itself, so much, even in the full tide of its iniquity. Its members were the Judges of the Law and the Fact; so now are *Justices of the Peace*. The former were Judges also of the punishment, when it extended not to life or member; so now are *Justices of the Peace*, within the prescribed limits of your Act. There was but one Star-chamber, which was fixed at Westminster; hundreds of these *summary Courts* may be at work throughout the Land, from dawn of day to set of sun; and it is a melancholy truth, that one of these powers, against which the complaints were loud and deep, and which eventually led to the abolition of that Court, is now revived and legalized; that is "the receiving "Informations in lieu of Indictments at the Assizes and "Sessions of the Peace!" Are our liberties and property less dear to us than were those of our forefathers? Are men become more honest? Are our laws less intricate than theirs? Is human intellect so improved that a knowledge of them can be the result of either intuition or inspiration? In the wisdom, integrity, and experience of the Judge, the accused finds the protection of the Law; take that away, even *Trial by Jury* may be perverted to purposes

of oppression, and be turned into a curse rather than a blessing. Jurors and Judges are but men, alike subject to prejudice and error; but in neither have I ever seen *corruption*. In their mutually counterpoising power consists their perfection. On trials for offences against the *Game Laws*, I have sometimes seen the consciences of the former swinging from their moorings, and only brought up by the solemn appeal of the Judge to the oath by which they had sworn to find a verdict *according to the evidence*. Surely there must be *something wrong*, very wrong, when the feelings of men are so strongly opposed to their duties. Judges too, I have seen, enter upon inquiries under prepossessions which would, to a person unacquainted with the workings of an honourable mind, sincere in the search of truth, appear almost insurmountable; during the gradual development of the case, I have oft watched, with almost breathless anxiety, their every word and look; I have afterwards heard them avow their prejudices, and hail with warm welcome the approach of truth. Jealous, as I have ever been, of the least invasion of my Country's rights, *particularly in the Administration of Justice*, there have been moments when in grateful admiration I could with the Poet exclaim,

"See Justice judging there in human shape!"

The hard contemplation of such a scene is calculated to teach even the sufferer resignation, and to turn a traitor

from his treason. Proud and happy should I be, could I bestow a similar tribute on the subordinate Tribunals; but truth forbids me. Before them the accused is not even within the pale of the Law; because not one in fifty of those who compose them are acquainted with that branch of our Jurisprudence out of which incidentally arise an infinite number of questions, all materially affecting his *Liberty and his Property*, If he is not judged in the spirit of, and in conformity with, the rules of evidence, *he has not a legal Trial.* Upon the principle, therefore, that the judgments against Sydney and Russel were reversed, and the execution of the latter recorded as a judicial murder, every imprisonment of a man under such circumstances is judicial tyranny; every pound taken from his pocket a judicial robbery.

One word more, Sir, *upon the Charter.* When a man is convicted by two Justices in a penalty, which he is obliged to sell his *forty shilling freehold* to pay, is he not *disseised of his Freehold and his Franchise, otherwise than by the Judgment of his Peers, and by the Law of the Land?*

When on such a judgment he is imprisoned, is he not imprisoned *otherwise than by the Judgment of his Peers and by the Law of the Land?*

When on the judgment of such a Tribunal a man is convicted of an offence against the Revenue Laws, and sent on board a ship destined to go wherever the public

service requires; *is he not exiled otherwise than by the Judgment of his Peers and by the Law of the Land?*

A man may *at the suit of the King*, by this summary Tribunal, be convicted in penalties amounting to *hundreds of pounds*; yet if he had occasion to sue his debtor for *five pounds*, he must spend *fifty* in Law Proceedings: his claim must be submitted to a *Jury* and a *Judge*, even though he possessed, under the hand of the Defendant, *an admission of its Justice*. Did this, Sir, never in the hour of Legislation strike you as a matchless specimen of *equal Law and equal Rights?* Such are the absurdities consequent on a deviation from the Common Law. If there is aught in it too rigorous, in the name of Humanity soften it; but take not from us, both in the hour of *Accusation* and of *Trial*, its protective Justice and Mercy.

A man may be now dragged from his home, and convicted as a thief or criminal receiver of stolen goods, before a tribunal composed (as our Magistracy is now constituted) of the Priest of his own and the adjoining Parish, who, in addition to six or twelve months' imprisonment, may sentence him to public or even to private torture. Let the proud Islander no longer taunt ill-fated Spain with her Inquisition. Her Cortes were once like the Commons of England, the Representatives of a brave and independent People. Peruse her history; it will not require the Lynx's Beam, there to discover, why she

has now ceased to be free. If we suffer "Trial by Jury" to be frittered away, the Liberty of the Press will soon follow it; and the fate of Spain's brave Exiles, now pining in our streets, may, ere the close of this century, be the fate of our Descendants. If you, Sir, do not shudder at this thought, you possess either less patriotism or more nerve than the Man who now addresses you. Go, visit the shores of the Baltic, where we are taught to believe that "Trial by Jury" first dawned on a benighted world. Losing its genial ray, their inhabitants became Serfs and Slaves. You may there see, even "*in the rotten State of Denmark*," a Pillar erected to commemorate the extension of Freedom to the Husbandman, on which is the following noble inscription. "The King, "being convinced that civil Liberty, directed by just "Laws, inspires the Love of our Country with Courage "to defend it, the Desire of Information, a Taste for "Labour, and the Hope of Happiness, has therefore "commanded that Slavery should be abolished, and that "Order and Dispatch should preside at the Execution of "all rustic Laws; that the Husbandman, being free, cou-"rageous, enlightened, laborious, and good, may in "future become and be regarded as an estimable and "happy Citizen." The Prince Royal laid the Foundation Stone in 1792, and the Inscription terms him "*The Son "of the King and the Friend of the People.*"

Cast your eyes on the neighbouring monarchy

(Prussia), containing a brave population, anxiously awaiting the blessing of liberal Institutions, as the reward of their devotion to the Throne, and loyally petitioning for the performance of promises, made to them in the hour of adversity, which in the day of prosperity are remembered no more. Then ask your heart what is the state of your own Country? It will tell you, that she is scarcely emerged from a conflict in which she was the rallying point and bulwark of affrighted Europe; that her wounds are not yet closed; that in every pound of bread her peasant eats he is paying the price of that, which has been called Europe's Freedom. *In such a moment* shall that Sun, which has guided us to Empire and to Glory, be shorn of almost the only beam that pierced the humble cot, and made its inmates proud even under the pangs of poverty? England stood firm

"Amidst the crash of nations."

On her soil were collected the scattered elements of Freedom. Would you destroy the sacred ark? Would you, boy like, run to pull down this rainbow of the moral world, this pledge from man to man, from generation to generation, that the earth shall be deluged with tyranny no more? God forbid! But, Sir, you have passed the Rubicon. Return and thank your God and your Forefathers, that the Constitution under which you live still retains the power of self-reparation, without endangering

the peace, or disturbing the order of society. Your Country will yet receive you, for the good you have done, she will forgive your errors; and but for that record which is now part of her history, would probably forget them. The moment of atonement is not to an honourable mind one of self abasement. I could name to you an exalted Judicial Character, who, by the goodness of heart and true greatness of mind which he evinced in the atonement of a public error, has raised himself, in my humble estimation, almost above humanity. In the Senate manfully avow your error. Forget not, that as a Representative of the People, you are "The Trustee "and not the Owner of the Estate; that you cannot "alienate, you cannot waste it." Defend the Prerogative of the Crown and the Privileges of the People with equal courage and integrity, remembering that they must stand or fall together. Devote your influence and your talent to the revision of the subordinate Courts of Justice, and to the effacing this foul blot from our otherwise admirable Constitution. Advocate "Trial by Jury" even to the confirmation of that Great Charter which has been, in some of the most trying and awful periods of our history, set up as a general banner for the union of all classes of the People. Transmit it to Posterity as a monument of Civil Freedom and Royal Gratitude. You will thereby fix your Sovereign more firmly in the affections of his Subjects; generations now unborn will rank his reign

with those of Alfred the Great and of the First Edward; and in this the evening of his truly eventful day, his sun may, yet, set in glory.

CHARLES BIRD.

[*APPENDIX.*]

TO

THE RIGHT HONORABLE

ROBERT PEEL, M. P.

Gascoyne Place, Plymouth,
2nd November, 1827.

SIR,

Ignorance or treachery has crowned your brows with the civic wreath; in the name of Justice and of truth for what?—For the extension of a jurisdiction which the Judges of England have ever viewed with jealousy, and have invariably pronounced to be a restriction of the Common Law, of a jurisdiction which was in the days of Lord Holt, compared with its present magnitude, as a

mole-hill to a *mountain*, and which *even then*, that intrepid Lawyer denounced *as a violation of the Great Charter of our Rights*, Such, Sir, is the unaccountable infatuation and blindness of your too-confiding Country, that it would little astonish me, after the perusal of that Act, which will transmit your name to posterity either with honour or with infamy, to hear that at the constitutional meetings in London, the truly patriotic toast of "Erskine and Trial by Jury," had given place to that of "Peel and Trial by Priests." How is it, Sir, that the eyes of that great man are scarcely closed in death, ere you step forth, and, with unholy hand, deface the glorious Palladium of our Laws, the fearless advocacy of which raised him to the highest civil office in the State which a subject can enjoy, and conferred upon his name honour immortal?—Great God! what a revolution in the Laws of my Country! In how short a space of time, and how quietly and silently has it been effected. Startle not, Sir, at the word revolution, for history will inform you that revolutions oft-times revel in the calm, though they sometimes ride upon the storm. But, Sir,

"We will meet at Westminster,"

where I now pledge myself to my Country to join issue with you on the most awful question, that can interest a free People. Should the present age do to either of us

injustice, my prayer shall be that Posterity may reverse the judgment. I will there, when the Parliament assembles, petition the Legislature for the restoraton of Trial by Jury, the revision of the subordinate Courts of Justice, the institution of competent Legal Tribunals, and for the gradual and eventually the total exclusion of the Priesthood from the Magistracy of England.

CHARLES BIRD,

Barrister at Law.

Nettleton, Printer, Plymouth.

A

LETTER

TO THE

RIGHT HON. ROBERT PEEL,

ON

Phl-3

THE SUBJECT OF SOME OF THE LEGAL REFORMS PROPOSED BY MR. BROUGHAM.

BY

CHARLES EDWARD DODD, ESQ.

BARRISTER AT LAW.

LONDON:

JOHN MURRAY, ALBEMARLE-STREET.

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A

LETTER

TO THE

RIGHT HONOURABLE ROBERT PEEL.

Sir,

Even if your official station were not peculiarly connected with the administration of the law, I trust I need not apologise for addressing a few remarks on legal reforms to you, who have already on sound principles improved one branch of the judicial administration. I confess, sir, I should not venture to offer the following observations, if I had not some hopes, that the views which I have taken of the spirit in which all such reforms should be considered, and the extent to which they should be pushed, were likely not to be in discordance with your views and principles on this subject and the spirit by which your general political conduct is governed. If I did not feel confidence in your being neither a speculative reformer nor an enemy to improvement, I could not hope that my humble views were worth laying before you.

I believe, sir, that you will agree with me, that "a disposition to preserve, and an ability to improve, are the standard of a statesman; that every thing else is vulgar in the conception, perilous in the execution *." To draw the line between practical reform of existing grievances and mere experimental innovation, is the task which devolves on the constitutional statesman, not less with respect to reforms of the law than to other alterations of the constitution. The public have, undoubtedly, a right to ask for a reformation of what is mischievous in our legal institutions, but it is the business of the statesman carefully to preserve every stone of the edifice that is not proved to be injurious. You know well, sir, how much easier it is to destroy than to construct: for every new experiment introduced, some old institution sanctioned by habit and well known to the people is displaced. If the new plan does not succeed in practice, it is not always easy to recur to the old. Nothing shakes public confidence so much, and is so practically inconvenient, as fluctuation and uncertainty in the legal institutions. Bad laws are, I believe, less mischievous than laws subject to capricious change. "It is the first care of a reformer to prevent any further reformation †." Schemes

* Burke's Reflections, &c. p. 233.

† Gibbon, Dec. and Fall, &c. vol. viii. p. 45.

that sound well in description, or make a figure on paper, which might be well deserving of the consideration of the framers of a new state, become utterly inapplicable and undeserving of attention in an old country, where old and long-rooted establishments must be torn up or defaced to make way for them. In such a country as ours, "the true politician always considers how he shall make the most of the *existing* materials of his country." The principle, therefore, and the only principle on which in my humble opinion legal reforms can in England be safely conducted, is that already recognised by your efforts, of inquiring into and removing abuses found to be actually felt and practically injurious to the public. The language often held by eminent statesmen whom you and the country at large respect, when other reforms have been projected, is that which I conceive statesmen should hold on the question of reform of the law, "Make out a case of existing abuse, show an evil felt in practice, prove that it proceeds from the system, and we will join in inquiring into the safest means for its removal." If you stop short of this principle, the public may justly complain; if you go a step beyond it, you admit the principles of theoretical harmony, of change for the sake of experiment; there is then no length which you are not bound in

consistency to proceed. You have conceded the principle; you cannot afterwards withhold the details.

It may, sir, seem superfluous to insist on a principle, which among rational men, though of different opinions on many matters, can scarcely be denied to be sound and wise. But, sir, in the present day, there is a class, who regard all the conservative principles of politicians as foolish, who systematically prefer all that is untried to all that is tried, who, in their presumptuous self-sufficiency, reverse every received maxim of political wisdom, consider experience as the worst of guides, regard precedent as a thing only to be overruled, look upon history as a school of error, the past as all darkness, and the upstart projects of some schemers of the present age as the only models of law and legislation which this country, after destroying its institutions, ought instantly to try in their place. Diligently as some of these persons have endeavoured, through the press, to persuade the people of this country that their laws are altogether worthless, that any reform short of sweeping destruction is a mockery, and that the interests of the learned and respectable body who study and profess the law, and produce its pure and enlightened judges, are directly in opposition to the good of the public, it is pleasing to see how little success is achieved by their sophistries. The people,

though not blind to the imperfections in parts of our laws, respect and esteem them in the main. They still revere the excellencies of a system which, with all its blemishes, produces far more pure administration, far more security of persons and property, far more equal protection to all classes, than any now existing in any considerable state in Europe. While every grievance, widely and severely felt in the country, finds its voice by petitions in the House of Commons, I have heard of no petitions against the state of the laws. Mr. Bentham himself (certainly a most unfriendly critic) is constrained to admit, as to our common law and its rules, which are the theme of such frequent abuse from those who know nothing of either —"Traverse the whole continent of Europe, ransack all the libraries belonging to the jurisprudential systems of the several political states, add the contents together, you would not be able to compose a collection of cases equal in variety, in amplitude, in clearness of statement, in a word, all points considered, in instructiveness, to that which may be seen to be afforded by the collection of English Reports of Adjudged Cases; on adding to them the abridgments and treatises, by which a sort of order (such as it is) has been given to their contents—nor to the composition of a complete body of law (in which, saving the requi-

site allowance to be made for human weakness, every imaginable case shall be provided for, and provided for in the best manner) is any thing at present wanting but an arranging hand*." The very fact of the great increase of resort to our courts by civil suitors affords in itself a negative to those exaggerated statements, which would insinuate that their expense and slowness amount to a denial of justice. If Chancery suitors are ruined by decrees in their favour (as we are loudly told), how happens it that a Vice-Chancellor is of necessity appointed, and that three Equity Judges, with all their labour, cannot satisfy the demands of the suitors for decrees on their rights? If debts are not worth recovering, as we are often told, by reason of the costs incurred; how is it that the Chief Justices in London and Middlesex, and the twelve Judges at the assizes, are consuming their strength and their intellects, in struggling ineffectually to despatch the mass of claims which plaintiffs are every day in greater numbers pressing before them? How is it that parties still persist in going before courts in preference to compromising their disputes, or resorting to arbitrators?

But, sir, how are our laws regarded abroad? While we are told that they are a compound

* Papers on Codification.

of antiquated abuses and mischievous oppressions, foreigners are diligently studying them, and introducing our systems into other countries. A liberal and enlightened judge from France * not long ago visited this country for the purpose of accurately investigating in detail the systems of our criminal and civil administration of justice, and returned, as he has himself recorded, highly impressed with the striking advantages attending their practical operation, and desirous to improve the laws of his own country by imitating ours in many important particulars. Our American brethren, with all their love of cheapness and simplicity, not only adhered to the English common law, when, with exasperated feelings, they threw off her government, but they have since declined the pressing offer of a code from a great code framer, and retain the English system with an attachment and a sense of its merits confirmed by long experience. A liberal and well informed writer of that country thus speaks of English law †: "The principles of the common law are the basis of all our institutions. They are the common soil, which may be cultivated in different modes, but to which we are indebted for whatever harvest of law and justice our industry may reap. The jurisprudence of

* Mons. Cottu. I regret I have not his work by me.

† See North American Review, No. 49. October, 1825.

every nation with whom we or our ancestors have had intercourse has been laid under contribution, and our laws, like our language, have flowed from a thousand springs. Like our language, too, they are adapted to our present character and wants, and admit of indefinite expansion and improvement . . . . The flexibility of the common law is a quality of vast importance to us as a young and improving nation. Our jurisprudence is a philosophical science, not derived merely from an abstract consideration of the nature of the human mind, but adapting the rules of action to the precise character, situation, and wants of those whom it governs."

Sir, these are not arguments to show that our law is perfect—I am far from thinking it so—but they do refute the vulgar exaggeration of its defects: they do show, that it is not useless for the ends of justice—that, while foreigners admire and imitate it, it is not held in disgust and disesteem in this country—that its bitterest enemies cannot deny its great merits—that the public throng and place confidence in the courts—that they desire no sweeping alterations or abolitions. The principle, therefore, sir, of reformation solely of the incidental grievances which parts of our law present, is not only the sole safe principle, but it is a principle which (however vague theorists may

decry it) will, I am convinced, be satisfactory to the public—nay, I firmly believe, the only one which would not shock, dissatisfy, and alarm every important class in the country.

Having ventured thus, sir (I trust not with undue boldness), to advert to what seems to me the only constitutional principle to be adhered to in partially reforming the English laws, I will proceed (bearing in mind the principle) to notice a few of the topics suggested by Mr. Brougham. I shall not say any thing on the administration of justice in India, which must, I apprehend, naturally be a subject for separate inquiry; nor of the system of magistracy, and the licensing of public houses, which occupy one seventh part of Mr. Brougham's address; nor of the detached points, as to revocation of wills, the construction of words in wills and deeds, the distinction between patent and latent ambiguities, the conversion of trusts into legal estates; since these isolated topics are so inseparably connected with the other parts of our system of real property and judicial construction, that it is in vain to consider them detached from the systems to which they belong. They in fact belong to the system of real property, which Mr. Brougham expressly excluded from his motion.

The first topic to which I shall allude ap-

pears to be a real grievance deserving of serious inquiry.

The increase of civil suits which has taken place of late years has rendered it indispensable, by every means, to render the superior courts more adequate than they now are for their speedy despatch. In this part of Mr. Brougham's speech I entirely agree. Looking at the overwhelming business of the court of King's Bench, and the comparative inactivity of the courts of Common Pleas and Exchequer, it is obvious that defects must somewhere exist in the constitution of these courts, which prevent their being efficient for despatching the business of the country. The desirable end which has been aimed at for centuries, and which has occasioned the ingenious devices which have broken down the peculiar forms separating the jurisdictions of the three courts, has been to render them all available to the public for any kind of suits, with some slight exceptions. That in this competition, even if made open and fair, all the courts should be equally successful in attracting business, I am not disposed to hope. But that the present enormous disproportion is capable of being in a great degree remedied, I think admits of no doubt. Mr. Brougham alludes generally to this disproportion: the fact appears by the parliamentary returns, that in the seven years, 1820 to 1826,

Disproportion of causes tried in the three courts.

the amount of causes decided in the Court of King's Bench was 13,379—in the Common Pleas only 3902, or not one third of the amount in the King's Bench;—while in the Exchequer, the causes of all descriptions, equity, common law, and crown cases, were only 1346, about one tenth of the amount in the King's Bench.

Before inquiring into the cause of this disparity, I will state what I believe to be the chief technical causes which have lately contributed to the increase of the King's Bench business. First among these causes, I apprehend, must be reckoned the late act called the Writ of Error Act*. Though this wise act has, I believe, done more to stop vexatious and dilatory litigation than any other act of late times, yet it has, with other causes, contributed to the swelling of the list of the King's Bench Nisi Prius causes. Before this act, the evasive debtor, in order to thrust off the day of payment, first had recourse to the chicane of sham pleas, then suffered judgment by default, and then, in order to avoid an execution, brought a writ of error into the Exchequer Chamber, and afterwards perhaps into the House of Lords. On this writ of error (except in certain cases) no bail was required from the defendant, to secure to the plaintiff the debt and costs. The

Causes of increased business in the K. B.

* 6 Geo. IV. c. 96.

act which you carried through the House of Commons, requiring bail to be given *in all cases* of writs of error, effectually defeated these dilatory tactics; since bail in error, not having (like bail in the action) the alternative of discharging themselves by surrendering their principal, can very rarely be obtained by defendants of that class who refuse just debts. Since the passing of this act, a great part of the delay and expense in the action on a bond by a Welsh widow mentioned by Mr. Brougham, could not have occurred. It became necessary therefore for defendants to change their manœuvres; and accordingly, to attain the utmost possible delay, they now abide by their plea, and go to trial instead of putting in sham pleas, and then letting judgment pass by default. Hence the cause papers at the sittings and assizes are now loaded with trivial and defenceless cases, in which formerly judgment was suffered by default, and a writ of error brought. These causes pass off from the paper by verdicts taken by consent, or by the cause being disposed of as undefended. But the advantage derived from the Writ of Error Act is, that here the defendant is now at check-mate in his manœuvres for delay. Judgment and execution follow in the four first days of the next term following the trial; and if, indeed, the defendant has delayed the trial at Nisi Prius by

preventing the cause being earlier disposed of as undefended, the judge gives the plaintiff a judgment, *as of the preceding term*, which entitles him to execution immediately. Thus although the Writ of Error Act has been attended with the smaller inconvenience of obliging plaintiffs to try their causes, instead of taking judgment by default, it has, on the other hand, given to them the much preponderating advantage of a judgment and final execution, immediately after the trial, instead of a long delay for a year or fifteen months, and a vast expense by one or perhaps two proceedings in error.

The increase of the causes at Nisi Prius, by the effect of the Writ of Error Act, it is to be observed, is confined to small cases, generally undefended, which the Lord Chief Justice, by a wise regulation, and with indefatigable zeal, sweeps off to the number of one hundred or more in a single day; appointing all cases of this description to be taken at fixed times, in preference to the heavier business of the court. Besides, sir, if this Act has driven business into one channel, it has necessarily subtracted it from another; and accordingly as the small cases tried at the sittings have increased, the writs of inquiry executed before the sheriff on judgments by default, and the references to the master to assess damages on bills of exchange, have proportionably diminished.

Mr. Brougham still complains of the evils of sham-pleading. But, sir, on inquiry, he might have discovered that these odious weapons in litigious hostility are, like writs of error, now growing rusty in the legal armoury; their utility being almost entirely destroyed by the discouragement of the courts and the Writ of Error Act. One eminent attorney informs me that scarcely one in a term appears in the multitude of cases in his office. A considerable special pleader, I find, had two such pleas in two years. Many others refuse to draw them: In short, sir, when the courts suppressed all such pleas of this kind as embarrassed the plaintiff by requiring special replications and different modes of trial, a great check was given to the odious system*. The courts, indeed, have latterly felt a difficulty in doing more for the object; since, as every individual has an undoubted right to shape his defence as he pleases, and the constitution requires the truth of the defence to be decided only by a jury, and not by affidavit, it is perhaps an excess of jurisdiction for the courts to call upon the defendant to swear to the truth of his plea. In a case in 1823, the Court of King's Bench said,

* This was effected by the cases of Blewitt v. Marsden, 10 East Rep. 237; Thomas v. Vandermoolen, 2 Barn. and Ald. Rep. 197; Richley v. Poone, 1 Barn. and Cres. 286: but see Merrington v. Beckett, 2 Barn. and Cres. 81.

"it would be going too far to treat the plea as a nullity unless the defendant verifies it on oath," and that they would endeavour to find some other means to prevent the practice. Sir, that means has been found in the effect produced by the Writ of Error Act, for as sham pleas are almost unavailing, unless followed up by suffering judgment by default, and bringing a writ of error (a defendant scarcely ever pleads a sham plea for the purpose of going to trial), these pleas are now almost entirely disused, since the Writ of Error Act has done away with the judgment by default, and driven defendants to the desperate resource of a brief delay by going to trial.

I would beg here, sir, to suggest that it might materially discourage defendants going to trial for delay, and might drive them to a compromise or payment before trial, if execution could be made to follow more immediately after the trial came. At present it is necessary to wait till the next term, as the defendant has a right to move for a new trial, or in arrest of judgment in the four first days of the term. This delay is always considerable, and after the summer assizes is sometimes four months. Now in ordinary actions for common money debts, where the case is undefended and the record simple, there can be no ground for any motion

in term time to impede judgment and execution. In these cases, I suggest that the judge at the trial should have the discretion (as is the case in the Court of Common Pleas at Lancaster), on the application of the counsel, of allowing judgment to be signed *immediately*, as of the term preceding, and execution to be had forthwith. If the defendant's counsel can lay before the judge, or if the judge discovers a ground for any motion in arrest of judgment, &c. then of course the judge would refuse the plaintiff's application. I believe this alteration would prevent many dilatory defendants incurring the needless expense of trial, which would thus afford them no material delay.

But, sir, there is another cause besides the effect of the Writ of Error Act which has materially contributed of late to the amount of small causes in the King's Bench paper. This is, the distrust and hesitation felt by attorneys and plaintiffs to compromising by taking a *cognovit actionem* or a warrant of attorney to confess judgment, in consequence of the operation on those securities of the New Bankrupt Act, 6 Geo. IV. c. 16, s. 108. That section, which is in some degree ambiguous in its language, has been supposed in the profession (and particularly among attorneys and solicitors) to have the effect of overturning a

judgment and execution (where the judgment is by default or confession) in case of a bankruptcy of the debtor happening at any distance of time after the execution—so that it has become doubtful whether the creditor, seizing, and selling, and spending the money produced by the execution for his just debt, might not at any time be obliged to refund to the assignees of the debtor becoming bankrupt afterwards. The cases decided by the Court of King's Bench * have indeed adopted the narrower and sounder construction, that, in order to give the assignees the priority, the bankruptcy must happen at least before the sale under the execution, though after the seizure. But still, even under this view of the clause, the plaintiff, having a judgment by verdict on a trial, is in a better situation than the plaintiff having merely a judgment by default or confession, since, in the former case, the plaintiff is safe if he merely *seizes* the goods of his debtor before the bankruptcy happens, whereas, in the latter, he does not appear to be secure unless he both *seizes and sells* before the bankruptcy. This *actual* inferiority of the security by judgment by default, added to the immense *supposed*

* Taylor v. Taylor, 5 Barn. and Cres. Wymer v. Kemble, 6 Barn. and Cres.

inferiority arising from the above popular construction of the Bankrupt Act, has given a great check to the practice of compromising on cognovits and warrants of attorney: plaintiffs are afraid of the security; they say, "we must have a verdict in order to be sure,"—and hence they drive defendants to a trial where they formerly compromised on a judgment by default. The intention of the above clause was undoubtedly salutary, and it was borrowed from an Irish statute, the 11 and 12 Geo. III. c. 8. s. 5, for the purpose of checking the great abuses of warrants of attorney, by creditors keeping these secret securities hanging over the heads of their debtors, ready to sweep away their whole effects, on insolvency, to the exclusion of all others who had given them credit on the ground of their apparent property. Perhaps the useful check given to this mischievous practice in some degree counterbalances the inconvenience of adding trifling causes to the Judges' paper at the sittings and assizes, and increasing the costs ultimately falling on the Defendant.

I believe, sir, that the above are the two main technical causes which, independently of the general increase of population, of trade, of contracts, and projects of all sorts, have tended of late to the great increase of the cases tried at

Nisi Prius—an increase which has, I believe, been almost entirely confined to small actions for debts, and which I believe to be attended by a proportionate diminution of business in other channels.

I will now advert to what I believe to be some of the main causes of the disproportion in the business of the three Courts of King's Bench, Common Pleas, and Exchequer.

First, and in my humble opinion paramount among the causes of the comparatively small business in the Common Pleas, is a cause noticed by Mr. Brougham—the inequality in respect of fees of office in the several Courts. The fees are somewhat higher in amount in the Common Pleas than in the King's Bench, and, what is more essential, they are paid on entering the Declaration at the Prothonotary's in the very commencement of the proceedings. 8d. per folio is then paid. Declarations vary in length from four or five folios to many hundreds in some cases. The average may perhaps be stated as twenty or thirty folios, requiring accordingly a fee of 13s. 4d. or £1. to be paid immediately, which, though a small amount, is a matter of importance to many attorneys, who prosecute trivial actions for clients who cannot advance money. It is by no means uncommon for the fees on the declaration to amount to £2. £3. or £4. In the King's Bench no payments

of this kind are required at first; they are only paid when the cause has arrived at the stage of passing the Record and proceeding to trial: consequently if the cause is compromised before the trial is at hand (which happens probably in at least nine causes out of ten) there is a clear saving of all the money thus paid for fees of office—and even if the cause go to trial, there is at least some weeks or months delay in paying the fees. Is it, sir, matter of wonder that, even if other points were equal between the two Courts, the cheaper price and credit of the King's Bench should be more delectable to attorneys and suitors than the dear price and ready money of the offices of the Common Pleas? But other points are far from being equal. The rates as to taxation of costs are more fixed and settled in the King's Bench than in the Common Pleas. There is also an additional cheapness in the King's Bench, in the fees paid on signing judgment; besides which, in the Common Pleas, the fees on entering are paid twice where the Declaration is of one term and the issue is of another, while in the King's Bench there is only one payment. Add to this, the suits of the three Counties Palatine, Chester, Durham, and Lancaster (three of the most important counties in the kingdom, and Lancaster alone producing generally 230 or 240 civil causes at every assizes) are almost

entirely excluded from the Common Pleas by the following circumstance. All causes in the Common Pleas commenced by original writ from Chancery; and though the suit is generally in fact commenced by process of capias, yet this presupposes an original writ issued, and in case a Writ of Error is brought for want of an original, it is necessary afterwards to get one issued, according to lawyers' phrase, *nunc pro tunc*. But then, by reason of the separate jurisdictions still attached to the Counties Palatine, the King's original writ out of Chancery cannot issue unto them; accordingly, if a suit in which the issue is laid in a County Palatine is commenced in the Common Pleas, the defendant may suffer judgment by default, and overturn all the proceedings by a Writ of Error, assigning for error the want of an original writ, and such a writ cannot afterwards be obtained. By this cause alone it is, I imagine, not too much to say, that many score, and, perhaps, some hundred causes in a year are excluded from the Court of Common Pleas and taken into the King's Bench, in which all points reserved, all the special verdicts, motions for new trials arising out of them at the assizes, are consequently discussed and decided.

Another inconvenience in the Common Pleas arises from the return days of writs. As all proceedings here are by original writ, parties

can only make their writs returnable on the general return days, of which there are four in a term, except Easter Term, wherein there are five. In the King's Bench parties may proceed by common process and make their process returnable on any day they please in Term, which much facilitates the proceedings. I am inclined also to think, that the separate admissions of attorneys as practisers in the several Courts also have an influence in swelling the causes in the King's Bench. Separate admission fees are paid by the attorneys on admission in each Court. No attorney can practise in a Court in which he is not admitted. A young attorney, commonly on commencing business, is only admitted in one Court, and that one Court necessarily must be the King's Bench, as the superior Court of the kingdom, and the Court in which alone he can be engaged in criminal business of various descriptions. If he practises in the Common Pleas it must be in the name of another attorney; and why should he do this, when he can try his causes in his own name in the King's Bench? When a man has the choice of courts, a very slight motive indeed determines him to bring his action in one or the other. A favourite counsel, a reliance on a particular judge, the mere locality of the court helps to gain it a preference or a disfavour. I know equity barristers, who, when instructed to pre-

pare a bill either in the Exchequer or the court of Chancery, avoid preparing it in the Exchequer, simply because that court sits in vacation in Gray's Inn, which is inconvenient for equity lawyers practising in the Chancery courts in Lincoln's Inn. I trust, sir, that from the above statements you will see, that in order to place the Common Pleas on any thing like a footing of fair competition for business with the King's Bench, it is first necessary to equalize the official fees both in amount and in time of payment—to establish one uniform rule for both courts as to taxation of costs—to provide for an original writ running into the Counties Palatine—and in some way to make a provision for an attorney being admitted at once of all the three courts. In any arrangements of this sort, I believe, sir, that the fair vested interests of any parties who may suffer by the alterations will be sure of your attention and protection. I am very much inclined to think, that if these measures were adopted, the barriers that now exclude the stream of lawsuits from the Common Pleas would soon be crumbled down, and that the fair share of the general current of business would find its way into that court. The attorneys and practical men with whom I have conversed express themselves desirous of resorting to the court, in order to get a speedier decision than can be obtained in the King's Bench, but for the causes which deter them.

And this brings me to say a word on the other causes alluded to by Mr. Brougham. 1st, With all the respect that I in common with the legal profession feel for the truly honourable and learned judges administering justice in this court, I believe it would be a misstatement that could impose on no one to say, that the profession, the suitors, or the public, feel the same confidence in their decisions which they give to those of the judges of the King's Bench. The constant occupation of the latter on business of a more varied and difficult character is doubtless of itself a great means of improving all the faculties which constitute judicial capacity. It is, I believe, with judges as with advocates. The more business they despatch, the better they despatch it; and the employment not only improves capacity but increases reputation and public confidence. Suitors are eager to flock where others repair; and the mere circumstance of a court being only half employed and half attended of itself checks their approaches. Remove the palpable obstacles above noticed, and I believe the reputation of this court would increase along with its business.

2d. It remains to say a word on the question put forward by Mr. Brougham, Whether the monopoly enjoyed in the practice of this court by the sergeants at law should be thrown open to the professors of the law at large? The

causes above noticed I believe to be the most influential in reducing the business of this court. Its peculiar system as to counsel may also have some effect, and I believe it has. You, sir, will I know feel all the consideration that is due to the interests of the respectable and learned body of advocates who have joined that court under the sanction of its existing constitution. Their interests and those of the public (if at all at variance) may be found not irreconcilable. No measure that has a rash and undue tendency to shake the consideration and station of a prominent class of the legal body, in whose general consideration and honourable station the public are deeply interested (since the purity and independence of the Bench are affected by this cause), will ever, I am sure, sir, meet with your sanction. I reckon nothing in this instance of the argument (often applicable) that all monopolies repress energy and tend to stupify talent. The Common Pleas Bar is, and always has been, occupied by many men of talent; some eminent leaders on their circuits, and who appear occasionally in the other courts with effect; and certainly not by any one man, whose zeal, and activity, and alacrity of speech does not negative all ideas of the quiescent effects of monopoly. I need not name the present Lord Chancellor, the Chief Justice of the Common Pleas, the Chief Baron of Scotland, and

three of the most eminent of our present judges as doing high honour to this court. I believe, sir, that according to its present constitution, the court always has been, and is always likely to be, well supplied with advocates qualified as leaders at Nisi Prius. It is the ordinary step of barristers desirous of leading business, of addressing juries, and feeling a capacity for it, to obtain the degree of sergeant from the Lord Chancellor. At the assizes and sittings no inconvenience is felt in the court, since the business of the junior barristers, who prepare the pleadings, advise on the law and evidence of the case, is here allowed to be done by barristers practising in the King's Bench. One great advantage to the suitor in the King's Bench is, that those same barristers, who have advised on and directed the cause from its commencement, and investigated the law bearing upon it with a care and industry which leaders (even when qualified) cannot bestow, are heard in the King's Bench to argue the legal questions reserved at the trial, arising on the record, or in any way springing from the suit. In the Common Pleas the sergeants who lead the cause can alone be heard before the court in term time, while the junior barrister, on whom the suitors and attorneys often mainly depend, with whom they have frequent communication, and who possesses the most intimate knowledge of the cause,

is obliged to sit silent, without offering his valuable suggestions.

The barrister prepares a demurrer on his own views of the law, or draws up a special case or verdict with minute attention to the facts of the case; but having done this in his chambers, he is obliged to leave the important question solely to be argued in court by a sergeant. Again, if a suit in the Common Pleas is tried at the assizes, it often happens that the cause is entirely conducted by advocates not belonging to that court; and consequently, when a new trial is to be moved or a special case reserved, to be argued before the Common Pleas in term time, the learned sergeants who were strangers to the case at the assizes must alone be employed, and the counsel who conducted the nisi prius trial cannot be heard. I believe, sir, that in these respects the system of the Common Pleas is felt as a disadvantage by suitors. Whether this would be entirely removed by a provision, allowing the junior barrister engaged in any cause to follow the learned sergeant in argument before the court, or whether some arrangement is necessary (as it probably may be found) for opening all the courts equally to all advocates, are questions which deserve serious inquiry; in which, while the interests of the suitors are considered, those of the legal profession both in and out of the

Common Pleas should not, I submit, be overlooked.

Though this measure should be adopted, I believe it would be far from placing the courts on an equality in point either of character or of business. As long as the court of King's Bench is a court of appeal from the court of Common Pleas and other courts, and has an exclusive jurisdiction in criminal matters, and a general superintendence by *mandamus* and otherwise over all the courts in the kingdom, it will not only retain a superior consideration as well as rank, but a very large share of important and profitable business beyond the other courts. This will necessarily attract to it and form in it the most eminent leaders of the bar, and the court will probably continue to enjoy a superior degree of confidence and reputation.

With respect to the court of Exchequer, though actions of every kind at common law and ordinary suits in equity, as well as informations on the part of the crown for offences against revenue laws, are all within the cope of this court, I have stated above from the returns, that in the last seven years there have been only about one-tenth of the number of causes decided here which are disposed of in the King's Bench. I do not now say any thing of the equity side of this court; but looking to the common law side of the court, there is one obvious cause which probably prevents a mass of business from flowing into

this court. While there are above 8000 practising attorneys in London and country taking out certificates, the practice of the Exchequer is solely confined, as you are aware, to the four sworn attorneys and sixteen clerks in court, of this court. I have now before me a petition to the House of Commons, prepared and signed by 170 of the most eminent attorneys and solicitors in London, praying that this court may be opened to them, on reasonable arrangements being made for securing the interest of the present practitioners. Most of the attorneys of the Exchequer are agents for attorneys in the country. To these latter it is indifferent whether their London agent bring their suits in the Exchequer or elsewhere, the agency fee being the same; and I believe on an inquiry it would be found, that according to the system of costs in the Exchequer, there are considerable advantages to the country attorneys in sending their suits thither. But no attorney in London of course ever thinks of employing an agent to sue for him in the Exchequer on a division of fees, when he may obtain the whole profits of the suit by commencing it in another court, of which he is himself an attorney. I believe, sir, that this is one of the main causes of the desertion of this court, which limits the sittings of the learned barons, often from ten o'clock till half past ten. I believe the solicitors and suitors are not much deterred by the fact of seeing various kinds of business

despatched in this court, which Mr. Brougham thinks makes them suppose none can be done well. The public are certainly apt to judge thus sometimes with respect to individuals; but as the judges of this court are generally taken partly from the common law, and partly from the equity advocates, and as the chief baron is generally an equity lawyer, the court is surely fairly competent to both descriptions of business. When the abovementioned monopoly is got rid of on fair terms, when the fees and taxation of costs are assimilated to the other courts, I have little doubt that this court will receive a large accession of business.

In order to complete the fair equality of the courts, it seems a matter of extreme consequence, as well as a means of preventing vexatious and expensive proceedings, that the rules and system of the practice of the three courts should be assimilated in many points in which they unnecessarily differ. Why should the number of days that a defendant has to plead be reckoned inclusively in one court and exclusively in another? why should the same matter, which is disposed of at first by a rule absolute at once in one court, be twice discussed on a rule *nisi*, at double expense, in the other? why should the rules as to changing the venue and proceeding against attorneys in the three courts be different? These discrepancies are evils, since they perplex at-

torneys and create an inequality in costs in the several courts. I am happy to hear that the subject is already under the consideration of the learned judges of the three courts, who have the means of framing general and harmonious rules on the subject, without any legislative aid. Perhaps, also, a simplification of the rules of practice of the several courts might also be effected, which might prevent the frequent mistakes and slips arising from the complex system of the practice, and which occasion proceedings to be often set aside, and the time of the court and judges in chambers to be much occupied with applications on mere matters of form. The learning of the practice of the several courts is arranged, with admirable skill and precision, in two large closely printed octavo volumes of near one thousand five hundred pages, by Mr. Tidd. Of all a lawyer's studies it is the most irksome and the most necessary. I cannot help thinking that this whole code of procedure might be curtailed and simplified by a strict investigation into its forms.

On the subject of the experiment made for the despatch of business in the King's Bench by the Act of 3 Geo. 4. c. 102. enabling the three puisne judges to constitute the court for hearing and deciding special arguments, &c. with cases, I believe there is little difference of opi-

nion in the legal profession. However beneficial the plan might appear likely to prove, few persons who have observed its results would think that the interests of the public are likely to be advanced by its continuance; and that the unsuccessful result of the plan arises from something defective in itself, and not from any obstacles in the way of its being fairly tried, will be admitted by all who observe and admire (as I sincerely have) the learning, acuteness, and indefatigable industry of the three eminent judges, who have exerted themselves to the utmost to render the court serviceable. Mr. Brougham, in his speech, has described the circumstances, divesting it of those accessories of publicity and dignity, which ought surely to belong to the first court in the kingdom, sitting in bank on solemn questions of right, and which are remarkably absent from this fraction of the Court of King's Bench, invested with the powers of the full court. To a spectator the court must appear to be disposing of some by-business, in which no one had any concern, which even the senior counsel in the cause leaves to the hands of his junior and the attorney, and yet this by-business, thus disposed of, without the desirable presence of the public eye, is nothing less than the most important business of the Court of King's Bench, deciding special

cases, special verdicts reserved, on account of legal difficulty, for the decision of the full court, solemn questions of law, and on the propriety of confirming or over-ruling the decisions of judges, at Nisi Prius, in the greatest proportion of all which cases their decision is without appeal. From an obvious propriety, the court never decides on questions as to new trials in London and Middlesex, where the cases have been tried before the chief justice, it being desirable that the chief justice himself should assist in the decision of such cases. I believe, sir, that in no cases can the decisions of the court be satisfactory to the suitors and the profession, unless the head of the court is a party to them.

I apprehend that the plan of the partition of a court of justice is radically defective, and the sittings at Nisi Prius form no exception to this principle; since from the nature of the proceeding, only one judge can there preside, that judge is in London and Middlesex always the president of the court; and besides the proceeding is only a species of delegated and ancillary inquiry into mere facts, subject to the review of the full court in bank, and never final in its nature.

With a view, also, to the weight and authority of the decisions as legal precedents, highly as the individual judgments of these three learned

judges are esteemed by the profession, I confes it appears to me not calculated to preserve the respect in which the current of the decisions of the first court in the kingdom have been, and are, and always should be held, that a large class of them should go forth to the legal world wanting the authority of one judge of the court—and that one so distinguished a person in station, and so truly venerable for learning and acuteness as the chief justice.

The great increase of the small business of Nisi Prius in the King's Bench, has of course had no effect in creating a proportionate increase of the term business. The following statement will show, that in the last three years the heavy business of the court of King's Bench in term time has not materially increased, nor does the present arrear seem to be of a very appalling nature.

Cases remaining to be disposed of.	Crown Paper. Containing criminal matters, sessions appeal cases.	Special Paper. Containing special cases, demurrers, special verdicts.	New Trial Paper. Containing the motions for new trials from the assizes and sittings.
1826. Hilary Term	4	26	61
1827. Hilary Term	7	30	74
1828. Hilary Term	8	39	56

If the appointment of new judges suggested by Mr. Brougham should take place, it would enable the business of bail, (which has of late diminished by the effect of the Solicitor General's act raising the sum required for arresting a debtor,) and all common motions, and the business of chambers to be transacted by one judge, and a full court of four judges to sit the whole of every day in term time, on the important business of the court. This arrangement would, I imagine, probably have the effect of keeping down the accumulation of business, and at the same time giving full satisfaction to the suitors, and the profession in the mode of decision.

Nor, sir, in these arrangements for the public convenience, should the reasonable comfort and health of the judges themselves be overlooked. A mass of labour is now accumulated on the judges of the King's Bench, especially on the

learned chief justice, which almost necessarily excludes regard to health and the reasonable comforts of life. Those who think a judge's business consists simply in sitting in court, and hearing and deciding cases for six hours a day, are much mistaken. The reading and sifting of papers, looking into authorities—framing elaborate and learned judgments on important cases—the necessary reading of legal works—the attendance in chambers on points of practice—the advising on acts of parliament referred from the house of lords, are only a portion of the heavy duties performed by them for the public, but out of the public view, and by the sacrifice of domestic recreations. That the same number of judges who were considered necessary five centuries ago (when our population and commerce were not one-sixth of what they now are) for the judicial business, should now be able to despatch it, is truly a matter of surprise. Fortescue does indeed in some degree account for the fact, by telling us "you are to know further that the *judges of England do not sit in the king's courts above three hours in the day, that is, from eight in the morning till eleven; the courts are not open in the afternoon.* The judges when they have taken their refreshments spend the rest of the day in the study of the laws, reading of the Holy Scriptures, and other innocent amusements at their pleasure; *it seems*

rather a life of contemplation, than of much action!"* That it is now rather too much a life of action and no contemplation is perhaps to be feared.

If such an increase of judges were made, I confess I cannot but think that the principality of Wales would be more satisfied with the administration of justice by judges of the superior courts presiding at their assizes. In some of the Welsh circuits, the present system, and other causes, have had a decided effect in deterring suitors from commencing their transitory suits in the jurisdiction, and have induced them to lay the venue, and try their causes in adjoining counties, where English judges preside. In one county to which I allude, there are, consequently, not above one-fourth of the number of causes tried which might be expected from its size, population, and trade, while the assizes are protracted by the two judges trying every prisoner and cause jointly, instead of sitting in separate courts. Whether the local judicature in the principality should or should not be abolished, is a wide subject on which I have not information to enter. In some respects it saves expense otherwise incurred by employing London agents, and receiving process from London.

* Fortescue de laudibus legum Angliæ, p. 196. (Amos's edition.)

I believe, sir, that those well acquainted with the present system are impressed with serious evils and inconveniences which require removal, but which must first demand investigation in detail. The evil of their being no appeal from the nisi prius judges to a full court, unless by bill of exceptions, and a removal of the proceedings into the King's Bench, is very serious. When the two judges have tried a cause at Nisi Prius, and mistaken the law, or misdirected the jury (as occasionally happens), what satisfaction can it be to the suitor to move for a new trial before these same judges?

Mr. Brougham mentions an instance on a late Welsh circuit, where, out of forty-six causes set down, twenty were left untried. I am informed that this evil was almost entirely occasioned by the very extraordinary number of the cases in which the witnesses were Welshmen, and the necessary delay of all the evidence passing through the medium of interpreters; and though a learned Welsh judge, not long ago, certainly did refuse an interpretation of English witnesses' testimony into Welsh, for the benefit of Welsh jurors, (considering that this would be a violation of the statute requiring the proceedings to be entirely in English), yet no case in the principality has as yet decided, that English jurors must decide on Welsh evidence without

the aid of an interpreter. Until, therefore, his Majesty's Celtic subjects can be persuaded to learn the English language, the proceedings, under any system, must be much lengthened by interpretation.

Before quitting the subject of courts and judges, I cannot forbear to express my surprise at the strange proposal to remunerate the judges in part by fees, in order to stimulate their industry and despatch. That the judges should be excluded from all hopes of advancement, that the puisne judge, with the habits and experience acquired by his judicial labours, should in no case be removed to a higher station, for which he has undergone the best preparation, certainly appears to me a proposition not likely to be conducive to the good of the public, or the adequate filling of the justice seat. But whether the motive of hope is allowed or denied to the inferior judge, I can conceive no plan more derogatory to the character of the Bench, likely to be less effectual as a stimulus, or more prejudicial in other points, than the plan of remuneration by fees. In principle, I think, sir, a judge ought to be placed in an elevated independence far above the influence of any such excitements. If the country cannot depend for all his industry and exertions on a sense

of duty, and an honourable regard to fame, the selection of the man has been wrongly made. The wretched stimulus of a few additional pounds in a term, will never call forth the abilities and powers of such men as are morally, as well as intellectually, fitted for a seat on the Bench. But how do we find the case in fact? Are any exertions now wanting? In courts where there is business to do, is not every nerve strained by the judges for its despatch? Almost the necessary recreations and intervals are denied to themselves and the bar, (of which Mr. Brougham gives an instance), in order to prevent the public business falling into arrear—what stimulus could induce them to do more? But, sir, observe the effects which such a plan must have on the minds of the judges and the public. The conscientious judge would be afraid of accelerating and despatching business, lest he should fall for a moment under the imputation of precipitancy, influenced by sordid motives; while, if we suppose for a moment judges of such feelings and principles as Mr. Brougham's proposition seems to imagine, can it be wise to expose such men to the temptation of hurrying forward with haste and negligence the suits before them, in order to gratify a love of lucre, which, where it strongly

exists, is seldom scrupulous in its means. To high-minded judges, the plan would be an insult and an obstruction; to the sordid, it would be a snare and a temptation. Nor would it tend less to create suspicion, and give a handle to animadversion. When the judge disposed of a clear case with summary decision, or by honourable zeal terminated a difficult one, I think it is easy to foresee that the defeated party, or the malignant observer, would often ascribe the despatch to the judge's interest in his fees; wounding the honourable feelings of the judge, and discrediting, to a certain extent, the soundness of the judgment and the character of the Bench. In criminal cases, where life and liberty are concerned, the proposal is doubly objectionable. Nor if the means were less objectionable, is the principle of applying a stimulus to a judge's progress in his duties, I conceive, free from objection. Haste and precipitancy are qualities, more than any others, mischievous on the seat of justice. Lord Bacon, among his admirable rules for a judge's conduct, says, "Patience and gravity of bearing is an essential part of justice, and an over-speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have learned in due time from the bar, or to show quickness of conceit in cutting off evidence or counsel too short, or to prevent

information by questions though pertinent * ;" and again he says, " Let not a judge meet the cause half-way, nor give occasion to the parties to say his counsel or proofs were not heard ;" and he advises judge Hutton to be " a light to jurors to open their eyes, but not a guide to lead them by the noses ; that he should not affect pregnancy and expedition by an impatient and catching hearing of counsellors at the bar †." I rejoice, sir, to see from your remarks in the House of Commons, that this new experiment for despatch of judicial business is not likely to meet with your sanction.

Having thus, sir, noticed some of the principal topics presented by Mr. Brougham connected with the important object of rendering the superior courts more adequate to increasing litigation, I must, before proceeding to other topics, beg to protest against a notion that sometimes is afloat, regarding litigation as of itself necessarily an evil, and its increase as a symptom indicative of something wrong requiring remedy. This notion can only to a very limited extent be sound. That litigation which in earlier stages of society might be traced to

* Essay on Judicature.

† Speech to judge Hutton on being called a judge of the Common Pleas. Bacon's Works.

maintenance and champerty—to those "sowers of suits who made the courts swell and the country pine"—was an undoubted evil—but an evil which in the present condition of society is hardly known. So also all that litigation which arises from insolvencies, from the refusal of just demands, is to be lamented; but though it may indicate bad circumstances, unsuccessful trade, and other causes, the laws are not to be charged with these misfortunes. The only kind of litigation, the increase of which is to be in any degree ascribed to the state of the law, is that which consists in laying hold of legal forms for evasive and dilatory purposes, in gaining technical advantages at the expense of right. Where this is found to be often the case, in judicial proceedings, it may be a ground for the legislator to consider and inquire; though it is obvious that even much of this sort of contest arises from the inevitable abuse to which the best laws may be distorted, and does not necessarily show that the law is wrong. When or where did laws ever exist which knaves and fraudulent debtors were not able to wrest to purposes of fraud, and vexation, and delay? But as to the fair contentions between parties disputing actual rights, I believe, sir, that the increase of suits of this sort, so far from being an alarming symptom, is in fact the reverse. We know,

sir, that no seasons have been marked by such inactivity in the law (with the exception of some sudden commercial convulsions), as periods of stagnant trade and commercial distrust. In every flourishing state, sir, the judicial forums have been not less thronged than the ports, the exchanges, and the marts of the country; and I believe, sir, that the increase of fair forensic contests indicate a proportionate increase of contracts, of transfers of property, of enterprises of all sorts, which, whether in success or failure, create conflicting claims and questions of doubtful right. Not only, sir, must litigations increase in number, but they must necessarily become more complicated as the relations of life multiply, and business of all sorts become more perplexed with details. Gibbon, in speaking of the difference between the comparative simplicity of criminal and the perplexity of civil jurisprudence, observes, "our relations to each other are infinite, our obligations are created, annulled, and modified by injuries, benefits, and promises, and the interpretation of voluntary contracts and testaments, which are often dictated by fraud or ignorance, affords a long and laborious exercise to the sagacity of the judge. The business of life is multiplied by the extent of commerce and dominion, and the residence of

the parties in different provinces of our empire is productive of doubt, delay, and inevitable appeals from the local to the supreme magistrate*." The determined simplifier of law, the enemy to protracted suits, may abolish the perplexity of the commercial code, and the long and difficult investigations which it occasions—but he must first annihilate commerce. He may set at rest all the puzzling questions on constructions of wills, of deeds, and of contracts which parties have framed according to their interests or their caprices; but he must first put testators, and tradesmen, and merchants into leading strings, lest by disposing at pleasure of their property and goods, they should perchance occasion a long law-suit, at their own expense, in Westminster Hall. He may put an end to the difficulties arising from trusts, and entails, and settlements—but he must thus attack all proprietors and landowners, forbid exercising full dominion over their hereditary estates, by family settlements, by trusts for younger children, annuitants, and married women; by entails, preventing the estate being squandered by life owners.

Sir, if all these ends were effected—if contracts were fettered—if testamentary disposition and

* Gibbon's Decline and Fall, &c. vol. 8. p. 109.

entails were abolished—if accumulations of wealth were scattered—if the web of society were thus pulled to pieces, I grant we should have shorter and fewer law-suits, less expensive legal conveyances, less complex questions; Westminster Hall might be shut up, the twelve judges paid off; and piepoudre courts, headed by unpaid grocers, might be sufficient for the cheap despatch of the remaining litigations of the first people in Europe.

Sir, I do not desire to treat this subject with levity, but I would fain that persons would look twice, and regard both sides of the question; and then they would perceive how much of the length, of the frequency, of the delay, of the expense of litigations in this country necessarily arise from the wealth, the institutions, the manners, the general scale of all things in the country, and would make a proportionate deduction from the unmeasured obloquy which they throw upon the laws.

Mr. Brougham proposes to alter the laws as to the evidence of witnesses and parties in the cause.

The framers of our law of evidence have adapted it to the species of trial established in the country, trial by a jury; as connected with the adjudication by a popular body and not by a judge, it must be considered. The object of

course of all rules of evidence is to elicit as much truth with as little admixture of falsehood, as the imperfections of moral and religious obligations, and the defects of all general rules, will allow. The English lawyers have thought it wise for that object, to exclude certain classes from even being produced to a jury to give testimony, judging according to general rules founded in the nature of human motives*, that no faithworthy evidence could in the generality of these

* The Roman law was far more strict than our own in its rules as to incompetency of witnesses; a father could not give evidence for his son, nor a son for his father; nor were any relations as far as cousins german compellable to give evidence against one another, nor was the testimony of servants receivable for their masters. But what is more to the present purpose, under the rule "nemo in re sua suorumque testis esse posse dicitur," Dig. lib. 10, a large class of interested witnesses were excluded. The principle laid down by Huber is very much the same as that of the English law, "Propriam causam ab aliena quemadmodum discernimus? Et palam est eam esse propriam causam cujus emolumentum vel damnum ad aliquem *in totum vel pro parte* suo nomine pertinet." Hub. Præ. J. C. lib. xxii. tel. 5. The rule extended to cases of parties liable to indemnify the suitor calling them; "Ergo non tantum dominus vel cui directe jus in re vel ad rem est intelligitur, sed etiam venditor in causa emptoris, cedens in causâ cessionarii et quacunque reum indemnem præstare debent." *Ibid.* This law prevails now in great part of the continent.

cases be expected from them. As to the exclusion of the insane, the infidel, the childish, the person convicted of crime, I need not now inquire; but it is proposed to do away with the rule which excludes parties on the ground of *interest* in the cause, and to allow all persons interested to be examined, leaving the jury to decide in the particular case, whether their testimony is credible. Considering the infinite degrees and diversities of interest which may influence the mind of a witness in particular circumstances, it is, of course, a delicate matter to fix the precise line where competency is to begin, and exclusion to end. And no possible line could be drawn on the subject which might not be open to cavil, as too narrow or too comprehensive. The rule which our courts have gradually, and after the benefits of experience established, is laid down by Chief Baron Gilbert *. "The law looks upon a witness as interested, where there is a *certain benefit or disadvantage to the witness attending the consequence of the cause one way:*" in addition to this direct interest, "if the witness can avail himself of the verdict so as to give it in evidence in support of his own claims; or if the verdict can be used in evidence against him, in

* Gilbert's Law of Evidence, p. 106.

case the party for whom he should be a witness should fail in the action, that is a direct and immediate interest in the cost of the suit, which will render him incompetent *." It is not now my business to inquire, whether this rule on the subject may be the very best which might be adopted, or whether the exceptions admitted in its application are wise or unwise. It is proposed to sweep away the rule, and to admit all interested witnesses to give testimony. This sweeping proposition, I humbly consider to be unwise and impolitic. The law in this matter appears to act on a sound and clear principle. It does not exclude the witness on the ground of bias, of relationship, of affection for the party to the suit. All these motives, though highly influential and affording strong grounds for observation, and even in some cases, exceeding in force the motive of interest, are yet regarded as too uncertain, and varying according to individual tempers and feelings, to be the ground for any well-grounded presumption that the motive will overpower the witness's regard to the truth. But while some persons act more and some less under the influence of these feelings—the law considers self-interest as a more universal, fixed, and unvarying rule of action; which, though it may often yield to integrity and to

* Phillips on the Law of Evidence, vol. p. 53.

various passions, is on the main so powerful, that when the interest is clear and direct, (as it must be in order to exclude the witness,) the law considers the fact as raising a fair presumption, that whether voluntarily or imperceptibly, the evidence of the witness will more or less be mixed with falsehood in favour of the side for which he speaks.

I am aware, it is not enough to show that interest is more invariably and generally hostile to true testimony than bias, unless the hostility of interest is also shown to be such, that it forms a sufficient positive ground for exclusion. But the distinction above drawn is, I think, a sufficient answer to the charge of inconsistency often made against the law, in excluding an interested and admitting a biassed witness. The two cases appear widely different. The extreme instance put by Mr. Brougham, by taking a case of a minimum of interest and a maximum of bias, was well calculated for effect in a speech. When Mr. Brougham puts as a proof of the absurdity of the law the case of a man with a shilling interest in *reversion* on an estate, being incompetent as a witness for the owner in possession, whereas, the son and *heir* of the old and bed-ridden owner may be his witness, to support his possession, he must be aware that this argument, derived from ex-

treme cases, is the old Horatian fallacy*, on which every possible rule, however wise, may be attacked. The freeholder with thirty-nine shillings and ten-pence per ann. may as well exclaim—Absurd rule, which excludes me, a man of education, of intelligence, of wealth, from electing, while my next door neighbour, an ignorant labourer, votes for the county member, just because he has two-pence per annum in freehold more than I have!

Mr. Phillipps thus states the rule point, and the reason: "An heir-apparent is a competent witness concerning the title to the land, for the heirship is a *mere contingency*; but a remainderman is not competent on such a subject, having a *present interest* in the land †."

Now, giving £50,000 value to the heir's expectancy, making his father aged and bed-ridden, and reducing the interest of the remainderman or reversioner to "the extent of a shilling," as Mr. Brougham did, the contrast is glaringly dressed out; but taking the uncoloured middle cases, in fair reasoning surely the remainderman's present vested interest, which he may turn into money any hour, and which in many cases cannot be defeated, is a case of near and direct interest in the suit while the contingent expectancy of an heir, worth nothing in present money, and which may be de-

* Utor permisso, caudæque pilos ut equinæ
Paulatim vello, &c. HOR. Epist. ii.

† Phillipps on Evidence, vol. i. p. 60.

feated any hour by a sale or a will, and, in many cases, by a birth, amounts at most to a case of bias in favour of the owner in possession. The one is a case of bias, of inclination, the other of vested pecuniary interest in any verdict respecting the land. Surely, therefore, those who approve the law, admitting a witness only affected with bias, are by no means driven to admit the propriety of receiving witnesses affected by direct interest. But if the law is not inconsistent, is it irrational in its exclusion?

It will hardly be denied, that the exclusion of falsehood from testimony* must be regarded as quite as desirable and important an end of the law as the admission of truth. Indeed, looking at the dreadful evils which may be worked by false evidence in courts, it cannot be doubted, that the exclusion of false witnesses in some cases is well purchased by the consequent exclusion of truth in many others. The precise proportions between the two cases necessary to show the rule wise, I will not pretend to determine. The rule has the advantage of excluding *all falsehoods and perjury arising*

* There are two exclusions from giving evidence which I cannot but hope to see removed as resting on no sound reason—viz. that of a Quaker who, though admissible in civil cases, is inconsistently excluded in criminal prosecutions, from remains of an old prejudice reprobated by Lord Mansfield, and various Judges (see Cowp. R. 390); and the absurd and inconvenient exclusion of a party, whose name is forged, from giving evidence on a prosecution for forgery (see 1 Phillipps, 113).

from interest. What sacrifice of evidence of truth must be considered to be put up with as the price of the benefits of the rule?

Taking the average run of witnesses who appear in courts of justice, I fear it can hardly be doubted, that one at least in twenty would not be restrained from speaking direct falsehood, though on oath, if his actual pecuniary interest obviously depended on it.

Is it then to be considered that we exclude truth in nineteen instances, in order to keep out falsehood in one? far from it. How many of the remaining interested witnesses must be considered as so involuntarily swayed on the matter in which their interest is concerned, as to leave their testimony a tissue of misrepresentation, in which facts are distorted and discoloured where truth and falsehood imperceptibly blend in a manner calculated to deceive rather than to inform. Probably, scarcely two out of the nineteen would be found whose admirably regulated sense and stern integrity would guarantee their testimony against any corruption from their interest. In the inscrutability of human motives, who is to judge between these classes? what judge or jury can say which is the one directly and wilfully perjured—which the considerable number involuntarily swayed by their interests—and which the two extraordinary persons proof against even the imperceptible influ-

ence of sinister motive? If a devisee in a will were put into the box to prove the sanity of a testator, or the defendant's bail to prove that the debt was not due, and there were no other evidence on the side, could the judge or jury with satisfaction pronounce one way or the other? Does not common sense reject the idea of a cause being decided on such evidence alone? and yet if the evidence, standing alone, is not sufficient to induce belief, I cannot see how it can tend in any material degree to corroborate other testimony which is credible. It is not necessary to show that the jury would be bound in such cases positively to disbelieve the evidence as clear falsehood. Evidence submitted to such a tribunal as a jury surely should be of an untainted character. Though accomplices are admitted, it is for the urgent object of discovering crime, and the perjuries and evils resulting are very considerable. What advantage can be gained by admitting testimony which, weighed according to common sense, is calculated to produce that wavering, suspicious state of mind which ought not to lead a court to pronounce a positive verdict. Chief Baron Gilbert observes, "where a man who is interested in the matter in question comes to prove it, it is rather ground for distrust than any just cause of belief; for men are generally so short-sighted as to look at their own private benefit, which is near to

them, rather than to the good of the world, which is more remote; therefore, from the nature of human passions and actions, there is more reason to distrust such a biassed testimony than to believe it."

But this evidence, according to the proposed plan, would be left to the jury with the judge's observations; they would have to decide whether or not the witness was in fact interested, and whether that interest deprived the testimony of its credit in their minds. I will not insist much on the long and perplexed collateral issues which must thus be presented to the jury, and discussed by the counsel and the judge as to the amount and kind, the remoteness or nearness of the interest, and the character, habits, morals, and religious principles of the witness, which must necessarily be inquired into, to enable the jury to judge of the degree of interest and the amount of conscience of the witness. These great inconveniences must certainly be submitted to, if the interested witness is a proper medium for arriving at truth; though surely it is not desirable to leave to a jury, in addition to all the complex merits of the cause, collateral questions as to the existence and degree of the interest—whether witness A.'s coat and demeanour and character, as far as they appear, show him to be a person with a conscience vulnerable to an

expectancy of £500; or, on the other hand, a person entirely above sinister motive, under £1000. If the jury refused thus to gauge the conscience and weigh the interest of the witness (as I think they often would), it would be because the only satisfactory way of dealing with such evidence would be to strike it out—not as false—not as clearly incredible, but as so unsatisfactory—so suspicious as not to be the ground of a rational conviction. If juries did this of their own accord, or if the judge (as I believe he generally would do), after recapitulating the facts of the interest of the witness, in the event of the cause, told the jury to decide for themselves, but that he could not tell them that a witness in such circumstances was worthy of belief, or fit to turn the verdict, then the evidence would be virtually excluded without the benefit of being so directly. If the evidence is to be neutralized, it is best neutralized by being rejected. What proprieties of demeanour, or respectability of appearance, or consistency of statement, can, before a jury, satisfactorily get over the fact of the interest? Judges and juries do not, and ought not to subtilise; they rightly draw broad lines; they would not read Mr. Hume's, or Mr. Bentham's*,

* Traité des Preuves Judiciaires, by Mr. Bentham and M. Dumont.

or Mr. Long's * ingenious views of the metaphysics of belief, to see whether they ought, as philosophers, to believe a witness in spite of interest. They would put it to themselves, "are we justified in letting the plaintiff turn the defendant out of his estate on the evidence of a man who is to get half of it?"

But then it may be said, if juries thus throw overboard the testimony, at all events it does no harm to leave it to them. If the evidence can do no good, the reason for change fails. But all evidence not fitted to produce belief necessarily does harm, for though I believe judges and juries in such cases would generally act or intend to act as above stated, especially when the interested testimony stood alone, yet, where it was mixed with other testimony, every one knows how impossible it is to remove from the mind of juries the impression produced, however suspicious the medium through which it is made. The judge in vain erases the testimony from his notes, in vain tells the jury it is unworthy of faith—the impression made remains. If the evidence is not of that character on which juries, under the advice of judges, can safely act in taking an estate from one man

* The opposite side of this question is exceedingly well stated in a work entitled "Reflections on certain Parts of the Law of England, by George Long, Esq. Barrister at Law," 1827.

and giving it to another, surely the safer course is to reject it. In doing so, we reject *some* wilful perjury and falsehood, *much* suspicious, and coloured, and distorted evidence, and, I believe, *a little*, and but a little of unmixed truth. If courts now perpetually exhibit disgraceful scenes of flat contradiction, on plain facts, arising from the bias, and the inclinations, and zeal of witnesses for friends and partizans, to how much more lamentable an extent would such scenes be carried, if we allowed the witness's box to be filled in succession by the gainers and losers, stimulated to perjury by pecuniary and direct interest, in addition to the other motives which now so often pervert truth?

Mr. Brougham proposes also to examine the parties in their own cause, and Mr. Bentham, who likens the proceeding of a court of criminal justice to that which, on many accounts, I think it essentially unlike, the domestic tribunal of a father at the head of his family, says that the party accusing or accused would be naturally brought before the pater familias. Mr. Brougham observes, that the parties are by the present law examined before arbitrators. Mr. Long, who does not extend his principle to the parties themselves, admits that every witness who makes himself a party *in effect*, though not in name, should be excluded. In this predicament, I humbly conceive every interested wit-

ness strictly stands. Sir, all the remarks above made as to interested witnesses apply with double force to that most interested of all witnesses the party to the suit. If judges and juries would feel hesitation and difficulty in acting on the evidence of interested witnesses, I believe they would have little hesitation in declining to act in general cases, on the evidence of a party coming to prove his own case. Before arbitrators the parties are heard as parties rather as witnesses. In many such cases they alone state their case without professional assistance, and where advocates are present the less formal nature of the proceeding leaves the party to take some kind of part with his counsel. In courts of justice the parties are heard as parties by the record and by their counsel speaking from their instructions. Is it seriously proposed after their counsel's statement, to swear them in the witness's box to prove it?

Mr. Brougham says they are now heard to state their cases on affidavit in business in term time, and while he proposes the examination of parties *vivâ voce* in their own cases, he expresses a hope that something may be done to check the practice of trying cases on affidavit of the parties. As media of proof affidavits are certainly less objectionable before judges—a trial on affidavits before a jury would be intolerable.

But certainly perjury is never more frequently committed, than in affidavits of parties for their own interest, as the records of our courts prove; and if the conduct of business allowed of it, I would rather see the principle of having the parties sworn, reduced in the case of affidavits in equity, and in term business at common law, than extended by swearing them in their own causes on a *vivâ voce* examination. Undoubtedly the publicity of an open court and cross examination are checks to a certain extent in the latter case, which do not exist in the former. Perhaps the cases of deliberate and premeditated perjury would be more frequent in the oaths on prepared affidavits, than in the extempore depositions before a jury. But I much doubt whether more actual false swearing would not take place in the *vivâ voce* examination arising from the heat and excitement of the moment, the half unperceived, half designed colouring given to statements directed to produce an impression on the court and jury, to whom the witness speaks. Mr. Brougham himself says that "though he does not think perjury would become more frequent by the alteration, yet he was rather afraid it would produce an eagerness which would make men swear as was technically called *near the wind**." I confess, sir, I am at a loss

* Times Newspaper.

to translate the technical phrase into any other English, than the word "perjury;" perjury *in foro conscientiæ*, though not perjury on which Mr. Brougham might procure the conviction of the party before a jury.

At the same time, sir, I will confess that this question (though I have considered it as falling within the principle of interested witnesses), rather reduces itself into the question, whether *one party should be allowed to extract a vivâ voce discovery on oath at common law from his adversary*, as he may now do on paper in equity. Whether the plaintiff or defendant having spoken by the record, and through his counsel, all which can turn to his advantage, should then be sworn to prove his statement, I confess hardly appears to me to be a question? a failure of justice seldom or never happens for want of this power—parties knowing the law secure themselves by writings or by witnesses in their dealings, or if they do not it is their own folly. The temptation to perjury is obvious. The exceptions * which

* See the exceptions stated by Mr. Phillipps, Vol. I, p. 111. These exceptions were also recognised by the Roman law (see Huber Prælec. Jur. Civ. lib. xxii. tit. 5.): "accedente hac ratione quod alioqui vix ulla crimina probari, atque punire possent,"—precisely the version of the English law.

admit the party injured in various criminal prosecutions, though a reward is gained, and in some actions for penalties where he certainly has a pecuniary interest, proceed on the ground of necessity or of the proceeding being substantially *penal* and not *compensatory*, and do not shake the principle of the rule.

But whether the rule of equity, as to discovery on oath for the benefit of the opposite party, should be extended to examinations at law, is perhaps a matter affording ground for difference of opinion and inquiry. Mr. Justice Blackstone * observes on this point, "how far such a mode of compulsive examination is agreeable to the rights of mankind, and ought to be introduced in any country, may be a matter of curious discussion, but is foreign to our present inquiries. It has long been introduced and established in our courts of equity, not to mention the civil law courts, and it seems the height of judicial absurdity that in the same case, between the same parties, in the examination of the same facts, a discovery by the oath of the parties should be permitted on one side of Westminster Hall and denied on the other." It must be admitted, that the plaintiff in an

* Comm. Vol. 3. p. 381.

action at common law, whose case depends on matters in the knowledge of the defendant, is now driven to a circuitous and expensive proceeding in equity, to obtain the defendant's discovery on oath, which he then reads against him in the action at law. If the plaintiff could obtain the facts, by examining the defendant in the witness' box, we should "arrive at the end by a cheap and direct road, instead of an expensive and crooked way." Whether the circumstances of a public, extempore, and viva voce examination of a party in order to furnish evidence against himself are so essentially distinguishable from the calm and deliberate answer prepared in chambers with legal advice to written interrogatories, as to make the compulsory examination in the latter mode judicious, but injudicious in the former, is a question on which my leisure has not enabled me to form a decided opinion. In accomplishing such a plan, a Court of Law must, I apprehend, be to a great degree turned into a Court of Equity. According to established rules, as well as to common sense, the discovery cannot be enforced till a primâ facie case is made out by the plaintiff. It could not be endured that a plaintiff, by merely suing out a writ, should drag a defendant to the witness box and place him under the examination of an opposed advocate. Respectable defendants would yield to unjust claims rather than encounter such assaults. The subject requires much consideration. I confess I doubt the practicability of the plan.

Another proposition made by Mr. Brougham is, that contracts of all sorts to be valid must be put into writing. One of the reasons advanced for this change is that the French law requires writing in all contracts, where the matter is above the value of 170 francs. If the code Napoleon so provides on the other hand, the code of Justinian does not so provide*; the laws of Germany in general do not require writing. In the greater part of Germany, the old custom of shaking hands (*handschlage*) binds a bargain, so that the argument from the mere fact of the law of a foreign country is at least neutralized. But such an argument can be surely of no weight, unless we are shown that the code of France in this respect is beneficial in its operation (which many of its provisions are not) and is approved by the people of France, which is by no means the case with all its branches. For aught that we are informed, this very provision (like the French system on the subjects of bankruptcy and hypothecations) may be found inconvenient in practice. But admitting that it were shown to be useful in France, I humbly conceive that this affords no sound reason for introducing it as an experiment here, unless a ground is laid by showing that our own system of parol contracts in the less special matters of life works

* The symbols of the very early Roman law are well known—"The indenture of Covenants was a broken straw." Gib. Dec. vol. viii. p. 21.—*Stipula*, whence the word "stipulate."

mischief. Is any such ground made out? By the Statute of Frauds, a very large class of important contracts now require writing; all contracts respecting the sale of land—agreements to pay the debts of third parties—agreements by executors to pay their testator's debt out of their own funds—agreements made in consideration of marriage—agreements not to be performed in one year from the time of making. And also contracts for things above the value of £10., unless an earnest is paid in money, or the goods are in part delivered. It may, perhaps, be admitted, that there is wisdom in thus requiring writing to contracts of this special and important nature, including so many of the most frequent and weighty bargains in life, which, from their very importance, are not likely to be entered into under circumstances where writing is an inconvenience to the parties. But, sir, notwithstanding that this law was prepared by Sir M. Hale, Sir Leoline Jenkins, and other distinguished lawyers, it has, from the time of Charles II. to the present day, occasioned a multiplicity of litigation in all courts at law and equity, exceeding that produced by any other statute or body of statutes,—a litigation which must be considered a large set-off against its benefits. There is one immense class of decisions as to the point, whether the signature is or is not sufficient; another, as to the precise construc-

tion of the word "agreement"—another, as to whether a signature by an agent is sufficient—another, as to the point whether a printed name in a bill of parcels is a signature; an immense accumulation of cases as to making out a written agreement from the detached contents of different letters. Then the difficulty was found soon after the statute, that it was impossible to hold cases within it, where the agreement was in part or in whole performed on one side—where it was executed, as lawyers express it; otherwise a vendee, buying an estate, and getting possession, might turn round on the seller, and refuse the price for want of a contract in writing. Such cases being, therefore, necessarily out of the statute, an infinity of questions have been discussed, and are now perpetually raised, as to what acts amount to a part performance, a part-delivery of goods, so as to make the contract executed, and preclude the necessity of writing. I admit that much of this contention has arisen in drawing the line between cases within and cases without the statute —and much from the peculiar wording of the law. A law extending to all contracts would certainly exclude questions as to the kind of contract intended; but questions as to what was a sufficient agreement in writing, a sufficient signing, what a part performance or execution, in short, what was or was not a compliance with

the words of the enactment, would have equally occurred though the statute had applied to all cases, and must occur on a new enactment, however framed. Mr. Sugden observes *, "I am not aware of any new law in my time which has not immediately led to litigation, in order to discover its meaning and settle its application." However, if the law is required, this must be submitted to. The question seems to be, whether perjury in proving parol contracts is now so frequent as to require a change. Perjury is certainly a public evil; and some such evil should, I think, be shown, before a change is made in a law affecting every-day business—before parties are told that in every trifling dealing of life they must have their inkhorn and paper at hand. What is to become of those who cannot read or write? Are stamps to be required in all cases, or is the stamp act to be altered?

The mere doubts arising from the loss of witnesses, which often occasion disputes upon parol agreements, do not seem to me, independent of the ground of perjury, to be a reason for *forcing* parties into written contracts, which they would not make of their own will. In many dealings on the Exchange, at markets, fairs, and other places, I apprehend such a universal rule would be found inconvenient. If writing is used where the law does not now require it, then the law need not order parties to do what they do voluntarily. If writing is not used in such cases, surely it proves that the people prefer trusting to words in their small dealings,

* Letter to James Humphreys, Esq. page 8.

though at the risk of a possible lawsuit, arising out of the uncertainty. The inconvenience seems theirs only. The late bankrupt acts and insolvent acts have required writing to a promise by a bankrupt or insolvent to pay his debts out of his future estate; but these are very special cases, in which bankrupts and insolvents were often held liable without any actual *promise*, on a mere acknowledgment of the existence of the debt *.

Mr. Brougham complains of evils in our system of special pleading, though I believe without proposing any definite alterations. It was hardly to be expected—certainly not to be desired—that Mr. Brougham, in a long speech on technical matters, should pass persecuted special pleading without amusing his audience, and enlivening a dry subject. The story, therefore, of his entertaining the court at York with the various counts in the case of Gilbert v. Sykes †, on a wager on the life of five or six several and separate Napoleon Buonapartes, must be regarded as an agreeable *sauce piquante* —not as an argument, showing the inutility or inexpediency of the practice of inserting several varying counts in the plaintiff's declaration. Mr. Brougham, in his youthful studies in the

* Might it not be well to alter the word "agreement" in the Statute of Frauds into "promise?" since a mere *promise* in writing is not held sufficient within the act, unless the consideration on the other side is also stated, so as to make an "agreement." The public do not understand this distinction, and the contracts invalid on this ground are innumerable. See Wain v. Walters, 5 East. R. 10. As to the variety of opinion among judges respecting the utility of this statute, see Preface to Roberts' Treatise on the Statutes.

† 16 East's Reports, 150.

Officina placitorum, of the truly and accurately learned Solicitor General, where he,

> For three hundred guineas paid,
> To this great master of the trade,
> Had at his rooms by special favour,
> His leave to use his best endeavour,
> By drawing pleas from ten till four,
> To earn him twice three hundred more,

must, I think, have discovered the utility of several counts in a declaration, as well as the uses of other parts of the pleading system to which he ungratefully objects. The general object of the declaration being the accurate statement of the plaintiff's case; so as to inform the defendant what he has to answer; three things are obviously necessary in it, fulness, clearness, and precision. If the declaration is not full and clear, it does not give the requisite information with adequate perspicuity to the defendant. If it is not precisely according with the real facts, the plaintiff is liable to be defeated at the trial by the evidence being at variance with the statement. The only effectual way in which this can be avoided, is by putting several complete and distinct statements on the record, which, while they give the sufficient information to the defendant, are yet adequate to meet any shape which in the great uncertainty of testimony the case may assume at the trial. Wherever the law allows a general form of statement (as in the

instances of *trover* and actions for money had and received, to which Mr. Brougham objects for their generality as much as to other declarations for particularity), none of these repetitions are necessary or in use—since the statement is sufficiently large to be consistent with any probable variations in the facts. But as in actions on special contracts, and on the special circumstances of the case, not falling within any of the general forms of writs in the Registrum Brevium, the law requires the facts grounding the legal claim to be stated for the information of the defendant, nothing would tend so much to nonsuits on mere points of form, and without touching the substantial merits, as to confine the plaintiff in such cases to a single count. If for instance, in the case of Sir Mark Sykes' verbal wager on Buonaparte's life, in an uncertain conversation after dinner, the plaintiff had only a single count, stating the wager to be in guineas, and the evidence proved it to be in pounds (not an unlikely point for doubt), the plaintiff must have been defeated, though all other points were in his favour. In a lax conversation it is easy to see how many other slight though essential points might be doubtful. What the precise variations in the counts were I do not know, since I had not the pleasure of being amused by Mr. Brougham's opening of the pleadings. Whether it was an instance of

abuse of the system, arising from the prodigality of the pleader, or his indolence in multiplying statements, in order to evade the trouble of selecting those views of the case which need alone be provided for (abuses which, I admit, are incident though not necessary to the system), or whether he only used the judicious variations required by the case, I have no means of knowing. But I have the high authority of the present Lord Chief Justice for saying, that a fair trial on the merits of the case, and an exclusion of mere questions of form, are very much secured by declarations containing such reasonably varied statements, as may suit any turns of the evidence at the trial. The counts must necessarily in such case be entire and complete in themselves. The varied statements could not be thrown alternatively into one count. The law properly forbids a party to state that he purchased of the defendant a hogshead of sugar, *or* coffee, *or* indigo, deliverable at London *or* Liverpool, at three, *or* four, *or* five months.

Nor can the difficulty be satisfactorily, in my opinion, removed by relaxing (as Mr. Brougham proposes) the rules of law as to variance, by allowing a party at the judge's discretion (according to Mr. B.'s proposition) to allege his case in one manner and prove it in another. By altering the law on this point I believe a greater evil than the varied counts in

a declaration would be introduced. The rules as to variance, sir, were certainly once applied with a degree of rigour which sacrificed substance to form; but in the rational light in which they are now considered, they appear to be indispensable for upholding consistency, regularity, and certainty in judicial proceedings. In setting forth a contract or instrument, if professed to be stated *verbatim*, it must be stated without any variation which alters the meaning of a word. If professed to be set out *in substance* and effect only, it must be in sense and meaning, though not to the letter accurately stated. Common sense seems to say that a party deliberately stating his case on the record in one shape, and leaving the defendant to suppose he means to abide by it, should not be allowed, on discovering a substantial mistake made by himself or his agent, to claim of the court to fly from his statement and succeed according to what he *meant* to state and not what he has stated. Why is the plaintiff in such a situation to be commiserated? Extreme instances may of course be found where this rule produces an evil. In general, parties may avoid the danger of variances by stating instruments, &c. succinctly, according to their *substance and legal effect*, as recommended by lord Mansfield and other judges; and it is the carelessness of the parties in introducing needless particulars which constantly occasions the

variance. In criminal cases the rules necessarily must be the same as in civil suits, except that where life and liberty are at stake, the judges consider somewhat stricter accuracy of proof requisite in order to convict the prisoner. I am informed, sir, that on the occasion of the passing of your late valuable criminal laws, the expediency of altering the laws in this respect was under consideration. "We * understand a clause was under discussion for relaxing the rules of law as to variations between the statements in the indictment, and the proof at the trial; but that on mature consideration of the matter, the learned judges were unfriendly to the adoption of any such clause †, as tending to introduce a laxity in criminal pleadings at once injurious to prisoners and perilous to the public. The truth is, the failures of justice occasionally resulting from defects in pleading are to be ascribed to the carelessness or ignorance of practitioners, and not to the vices of the system: however the system might be altered, it could never effectually provide against mischiefs arising from these causes. * * * So long as the rule is upheld, every Englishman is secure that

* Quarterly Review, No. 73, January, 1828.

† Lord Mansfield, also, though anxious to prevent slips and formal objections, said he was convinced it was better for justice the strict rule should prevail. See 2 Doug. R. 666.

he cannot be accused and condemned on a charge of which he has not received exact intimation; while the records of the courts will be sure to furnish accurate particulars of the crimes of which any individual has been convicted or acquitted, and thereby to supply him with a ready defence in case of a second accusation for the same act. In some occasional instances, the adherence to the rule may cause a failure of justice, which is only what must sometimes happen as to every general rule; but it is obvious that the rule must cease to be one, if the judge in each particular case is to decide whether it is fit to abide by the rule or to disregard it." And yet, sir, this is what Mr. Brougham proposes, "that nobody should be turned round on a variance *except at the discretion of the judges.*" Mr. B. was struck with the hardship of the particular case—a prosecution for perjury failed, the false affidavit stating the word "grandmother," and the indictment incorrectly stating it "mother,"—but are we, on this case, to admit a new principle? one always considered dangerous; one which our whole system of cases and precedents is made to exclude; one which the judges would, I think, deprecate, of leaving to them in cases of property, life, and liberty, to say according to no standard, or rule, or principle, simply whether (notwithstanding a variance in sense) they believe the libel or in-

strument stated to be the same as that proved—If the Judge might overrule the objection when a word was omitted, might he not also, though the omission was a line or sentence? The discretion must apply in all cases—in prosecutions for treason and libel as well as in actions would it not often be dangerous, and at least open to animadversion? would it not introduce an unsound principle in addition to laxity and uncertainty of proceedings, which would be greater evils than the present occasional failures? I am not aware of the particulars of the case noticed; but if the proceedings were set out *verbatim*, the variance was occasioned not by the law, but by ignorance of it; for the stat. 23 Geo. II. c. 11, s. 1, provides that "it shall be sufficient to set forth *the substance* of the offence, without setting forth the bill, indictment, &c. &c." If the evil of these failures can safely be remedied, I admit it is most desirable. If the strictness was observed in favour merely of the defendant, he might be required to give notice to the plaintiff of the variance, or otherwise to be excluded from insisting on it. But suppose the defendant overlooks it, and the judge perceives it at the trial, and that it alters the *meaning* of the libel or contract in however slight a degree, is it right that it should appear on the records of the Court that the plaintiff recovered on an instrument there stated, when in truth he recovered on one different in sense? How could records be authentic evidence if this were admitted?

Mr. Brougham objects to the actions of trover, and for money had and received, as being too vague and brief, and applying to a number of

cases, widely different in their facts. The action of trover, he says truly, is applicable to the case of the plaintiff's gun being lost by the plaintiff and found by the defendant, and wrongfully converted to his use. 2. To the case of a gun deposited and refused to be restored. 3. To a gun stopped in transitu, on the ground of bankruptcy, (that is, sold to the bankrupt before bankruptcy, but not being finally delivered, equitably liable to be withheld from the buyer by the seller), and several other cases which it is unnecessary to enumerate. Now, sir, if the concise form of this action (which, though technical, is one of the cheapest, and simplest, and most useful in the pleader's repertory) occasioned doubt as to the point on which the parties go to trial, defendants would have a right to complain. But I think I may say, sir, this is never the case. The declaration tells the defendant the *legal effect* of his conduct. It tells him, "you have *converted wrongfully* to your use a gun, *my property*." (The fiction of losing and finding is understood, and deceives no one.) The details are matter of evidence and not of allegation. I believe there is never a case of this sort, in which the defendant goes to trial without perfect certainty whether it is a question as to a gun lost and found, a gun deposited for custody, a gun sold but stopped in transitu, &c. Independent of the communications that pass between the parties and their agents antecedent to an action—independent of the unfrequency of two parties being in contest at the same time about several gun transactions—there is one authentic means of information in the de-

fendant's power. I mean the particulars of the plaintiff's demand, which the defendant is entitled to obtain before pleading. These give him time, place, and every circumstance necessary to identify the business: and if not sufficient, a judge will order better. If it is said these particulars should be given in the declarations, I answer, if the same end is substantially attained by the present means, and no evil occasioned, why overturn an established form of action familiar to every judge and lawyer, interwoven with the series of decisions of the courts? If the particulars were thrust into the declaration, expense and length would infallibly be much increased. The declaration being then made specific and particular, it would be indispensable to have a variety of counts (instead of one), in order to avoid the dangers of variance, which occur in cases of more detailed declarations.

The same observations precisely apply to Mr. Brougham's objection to the action for money had and received. The declaration for money had and received says, in substance, to the defendant, "you have received money, to my use, by some means, which constitutes a debt of so much due from you to me." The particulars and details are not stated, but the want of them is entirely made up by the means above mentioned. I really believe, sir, that no suitor or practical

lawyer from Westminster could point out any real surprise or doubt before or at the trial, arising from this form of declaration. The action, from its very simplicity and expansive nature, has always been applauded by the greatest judges, and is found in practice, I believe, one of the most simple, available, and beneficial remedies now existing in our courts. What objection can it be to a legal remedy, that its virtues are applicable to a variety of widely different cases? cases, however, which are all branches of the same legal class of injury. If the generality of form produces no surprise, surely its brevity, cheapness, and general utility are merits, and not defects. It is nothing to say, why require particularity in declarations of special assumpsit, and admit generality in actions of trover, and money had and received? The answer is—the details are given in one action in the declaration, in the other by the particulars of demand—the end required is effectually ensured by different means.

Mr. Brougham objects also to the declarations in an action of trespass, as being almost all in the same form, whether the action is for seizing and taking goods, assaulting the person, or seducing the wife or daughter of the plaintiff. Undoubtedly, sir, all these matters being, in legal construction, trespasses, a certain form and certain words of art, which denote a

trespass, will be found in all the declarations. But Mr. Brougham could not have meant to assert, that each declaration of this sort did not contain a specific description of the actual injury complained of, amply sufficient for the purpose of distinction, and giving the requisite information to the defendant. Every declaration for an assault describes, even to a ludicrous minuteness, the nature of the assault. Contusions, and fractures, could hardly be more graphically brought before the Court. The declaration in trespass for seizing goods states distinctly and briefly, that the defendant forcibly seized, took, and carried away such and such goods described. The declaration for seduction or adultery describes by two energetic and certainly unambiguous phrases that injury which the counsel of the plaintiff may afterwards expatiate upon for six hours to a jury, without doing more than amplify the plain English of the pleader. Mr. Brougham observes, that the declaration in trespass to land where information is not so material (I really do not know for what reason) is stated with greater lengthiness of description than the other cases. Whether this amplification of style is more conspicuous in the description of the fences broken, the gates fractured, the grass trodden down, of a declaration for local trespass, or of the nose pulled, the hair torn, the limbs lacerated, of the assaulted plaintiff, I will not pretend to decide; but this, sir, is, I think, clear, that

each declaration of trespass of any sort states, in terms strong and not to be misunderstood, the grievance complained of. Indeed it is this coarse plainness and *naive* particularity of style that not unfrequently give to Mr. Brougham and other leaders pressed for a topic, a subject to amuse their audience, if not to obtain a verdict. That Mr. Brougham, with his experience, can talk about "counsel, court, and jury being left in the dark," as to the cause of action in declarations in trespass, I confess to me is surprising—that declarations in trespass are shorter in their dimensions and more downright in their expressions than declarations in actions on the case and special assumpsit, arises, I apprehend, solely from the more simple and palpable nature of the cause of action. Less is told because there is less to tell, and less nicety of phrases required. Even in these actions for injuries, or *torts* as they are called, if it were required, a particular of demand might be had; but, in truth, the particularity of the declaration has almost entirely obviated this practice.

Mr. Brougham also objects to the allowing so many different defences to be given in evidence on the general issue. In *theory* there is an incongruity. For instance, in an action on a bill or note, the defendant is allowed to say shortly and generally, *non assumpsit*, he did not contract; and then to set up a defence of usury, or gaming, or infancy, release, accord and satisfaction, which

admit the contract but show it void. Originally the plea of general issue was adapted only for a defence which denied the contract ever having been made; and the extension of it to the defences which admit the making but show the contract to be void, is a departure from the old principle gradually suffered by the courts. But unless an evil arises from this incongruity, now become inveterate in practice, why make an alteration? Instead of an evil, I believe there is a benefit. The very circumstance of a series of acute and experienced judges—seldom over ready to admit a departure from settled forms—having now for a century allowed these matters to be proved without being pleaded, raises a pretty strong presumption that this relaxation was not felt to be inconvenient in *practice*; and I believe that the experience of most lawyers of the present day would lead them to concur in that opinion. Mr. Stephen, in his valuable work on pleading, states that "it was probably first encouraged by the judges in consequence of a prevalent opinion that the rules of the science were somewhat more strict and subtle than is consistent with the ends of justice *." Blackstone expressly says, "though it should seem as if much confusion and uncertainty would follow from so great a relaxation of the strictness anciently observed, yet *experi-*

* Stephen on Pleading, p. 182.

ence has shown it to be otherwise, especially with the aid of a new trial in case either party be unfairly surprised by the other*." I believe surprises of this sort very seldom occur in trials. The plaintiff certainly is not quite so likely to be informed of the defendant's defence as the defendant of the plaintiff's claim; nor can he in general cases call for particulars, which, however, if found necessary, would not be an objectionable plan. The defence must, however, always arise in some way out of the real facts and transactions occurring between the parties, and which the plaintiff, therefore, is very much acquainted with, and able to inquire into before hand. Where a case of gross perjury is got up as a defence, a special plea would no more enable a plaintiff to meet it than the general issue, since, though it might let him know that usury or gaming was to be proved to nullify his claim, it would not give him the names of witnesses or particulars of evidence. Such rare cases must necessarily be left to the exposure of cross-examination, and the acuteness of the counsel.

Nor, I confess, do I think that the frequency of pleading the general issue is inconvenient on the ground of mixing up, as it

* Black. Comm. vol. iii. p. 305. and see Lord Erskine's Remarks in his speech on the Rights of Juries. Speeches, vol. i. 277.

certainly does, matters of fact with matters of law, which would be separated by the strict forms of pleading. Although matters of law and of fact are mixed together in the issue, yet they are immediately separated by the judge at the trial, who leaves to the jury to find merely on the facts, and a verdict under the judge's direction is found one way or the other, with leave to the parties to go before the court, in term time, on the point of law, if dissatisfied with the judge's opinion. A practised judge and counsel, I think, seize without difficulty the points of law arising in the most complex facts of a cause. The generality of the issue does not in practice, therefore, I believe, interfere with the cardinal principle of law, that judges judge of the law, and juries of the fact. Mr. Brougham appears to think, that perjury is occasioned and facilitated by the general shape of the issue. But I confess I am at a loss to see how this can be the case, except in as far as the present system probably produces more issues of fact and fewer issues of law on demurrer, and as, therefore, more witnesses are sworn, there must of course be somewhat more perjuries. But it must be remembered, that if a defendant has three different defences on which he means to rely, he can have the benefit of them as much without the general issue as with it, since by Lord Somers' act, 4 Ann, c. 16. s. 4 and 5, for the amendment of the law, he may plead several different pleas. Under either system, he would raise the same points

at the trial, and call the same witnesses—he might equally procure false witnesses to swear to a release or payment of the debt—and whether they were called on one general issue, or three separate issues, I confess would appear to me to make no difference as to facilities for perjury.

The saving of expense and delay by the plea of the general issue is considerable, and its convenience is shown by its being allowed by so many acts of parliament in particular cases—though in these cases plaintiffs ought often to have a general form of declaration prescribed: I admit that the system is not harmonious, that in actions on the special circumstances of the case, and in trover, many defences are given in evidence, which, in actions of trespass, must be pleaded specially. But do these anomalies, which are grown familiar in use, produce evil in practice? It is not to be supposed that the plaintiff is obliged to arm himself in every case on the general issue, against a defence of infancy, release, gaming, &c. merely because they *may* all be put in evidence under that plea. Fictitious defences are not, in fact, of such frequent occurrence—nor would a special plea enable the plaintiff to meet them. In the vast majority of cases, the defence intended is understood between the parties.

Mr. Brougham complains of mischiefs and inconsistency in the rules which allow several pleas, and these not always consistent with one another. The act which allowed this has on

this and other accounts been often considered of salutary effect. It appears reasonable, that if you do not allow the defendant one general plea, (as is the case in most of those actions where several pleas are principally pleaded, debt on bonds, actions of covenant, &c.) which shall put in issue the whole facts of the plaintiff's claim, you should allow him (subject to some restrictions, I admit) to take issue on it piecemeal by different pleas. (Our system certainly also often allows him, I think unnecessarily, a complete general denial, *and* several specific defences). When a plaintiff comes into a court to make a charge or claim against another party, drawn up with deliberation, it is surely not only a rule of law, but of reason, that he should be prepared to make good his whole statement, and it would surely be a hardship on a defendant to oblige him to select some single point for denial, and to admit the rest of the claim; notwithstanding Lord Coke says, that a double pleader is like a champion in battle who uses two batons. That the pleas may be inconsistent with one another,—provided each is applied to meet some allegation of the plaintiff—appears to be not unreasonable, and sometimes necessary. Suppose the claim of the plaintiff to be false (which sometimes happens, and in no case till proof is there any presumption for the plaintiff), why is the defendant to be restricted from requiring full proof, by denying every allegation? What is not expressly denied in pleading, as in discussion, is taken for

granted. Why is the defendant to be driven by the law into admission of a single fact, resting on the unproved allegations of the plaintiff on the record? and yet, if he is not obliged to make such admission, he must necessarily plead several and sometimes inconsistent pleas. Take Mr. Brougham's instance of the action on the bond. Mr. B. thinks it a grievance that a party should plead, 1st, Non est factum; 2d, Solvit ad diem; 3d, Solvit post diem; 4th, Performance and a general release. Mr. B. also states a plea of *solvit ante diem*, but this plea is a proof of Mr. Brougham's research, for, though once rarely in use, I can find no trace of it within sixty-five years, and none whatever in Mr. Chitty's, Mr. Stephen's, or Mr. Archbold's Modern Treatises on Pleading. Now suppose, sir, an action brought on a bond paid off by defendant (which has not unfrequently occurred), why is not the defendant to defend himself by every kind of plea from such a fraud? If he pleads merely payment, he may not have a witness living or at hand, or a receipt in existence to prove his plea. Why is he to be deprived also of saving himself from an unjust claim by pleading *non est factum*, and thus obliging the plaintiff to prove the execution of the bond, in which he may possibly fail, or in doing which he may produce a witness useful to the defendant, who may perhaps show an admission by the plaintiff, of the receipt of the money, or other testimony favourable to the defendant? Why, again, may he not plead a release of the bond, on

which he may make use of the presumption of release arising from the bond being long unheard of, and not put in force? Surely, sir, it would be the height of injustice to exclude a defendant, in *many* cases, from all these defences; and yet, if one defendant may want them, it is difficult to forbid other defendants to resort to them—for the rule must be general. How is it to be known before the trial whether it is a fair or a fraudulent claim? In our care to expedite plaintiffs, we should not forget to secure defendants. By the Statute * of Lord Somers, which expressly enabled parties to plead more than one plea, the leave of the court is required, so that the court can control any improper use of the privilege. The permission is now a matter of course, though not so formerly. I confess I think, 1st, if it were made necessary to obtain a Rule Nisi before a single judge, it might in some degree prevent abuse; and 2dly, I think it should never be allowed to plead in *company with the general issue any specific defence which may be proved under it*, as infancy, release, &c. In these cases I would make the defendant take his choice, and he could not be prejudiced. The statute also provides, that a party pleading several pleas, and succeeding on only one, shall *have no costs* on the others, unless the judge certify that it was proper to plead them. 3dly, I think, sir, if this provision were extended, and the defendant in such were *obliged to pay costs* on the pleas on which he failed, un-

* 4 Ann. c. 16.

less the Judge certified, it might be a useful alteration. And 4thly, I would also suggest that this provision might be precisely applied to the various counts in the declaration, so that the Judge at the trial should in every case *certify exactly what counts were fair and necessary*, and on these alone costs should be taxed for the plaintiff. By these regulations I cannot help thinking that some of the incidental abuses arising from the system of several pleas and several counts would be removed, while the advantages of the practice would be retained. 5thly, I would also suggest that the plaintiff should be obliged to condense all the *common counts* in assumpsit into one, which would save length without any inconvenience.

Mr. Brougham wishes to allow a defendant one defence in point of *law*, and another in point of *fact* to the same pleading; and thinks it wrong that a party demurring to the plaintiff's law should be obliged to admit his facts, or *vice versâ*. Mr. Brougham will not allow a defendant to say to the plaintiff, "You tell me I owe you £1000 on a bond—show me first that I executed the bond; and then I will prove I paid it off:" (which, though apparently inconsistent, I think I have shown to be necessary) but he will allow him to assert, "The bond is bad in law—but if it is good in law, I say the execution is not my writing." I confess, sir, I agree with Mr. Brougham, and think that the defences in law and in fact are not inconsistent. They seem to me to be rational, (like several defences in *fact*)

on this ground—that the burthen of *proving his whole case* must in principle lay on the plaintiff.

But, sir, the defendant has now the advantage of a defence in law, and in fact; for if the plaintiff's bond be not valid in law, the defendant cannot be charged by it, though there be a verdict against him at the trial, since the bond being on the record, the court will *arrest the judgment* on the defendant's motion. While this can be done, I confess I do not see why a change should be made, to enable a party to demur and plead to the same declaration or count. Though on sound reasoning I confess it would appear to me not inconsistent, I believe it would be liable to much abuse, and tend to introduce delays and expenses, and long and subtle records and arguments.

The crown has now the power of taking issues both in law and in fact, and the length and intricacy to which records run in crown proceedings in the exchequer, is certainly no argument in favour of the alteration. At all events, I entirely concur with Mr. Brougham, that the crown and the subject should, on every account, be placed in this and in the other points alluded to, on an equal footing before the courts.

The above are the main objections made by Mr. Brougham to different parts of the pleading system. Looking at pleading as a whole (without reminding you that Sir William Jones considered it founded on "an exquisite logic," that Blackstone and Lord Mansfield highly applauded its rules), it is to be regarded as a con-

densed and technical mode of formal narration of the plaintiff's grounds of claim, and of the defendant's defence. Unlike the system of courts of equity, and that prevailing in most courts of Europe, where a judge and not a jury decides, and where the parties state their claims and defences, as it is called, "at large," the system of English pleading is directed to the object of developing by a close discussion (formally *oral* and now on record) the precise points in issue between the parties, conducted according to rules of logic, throwing off by logical admissions and concessions all extraneous matter, and proceeding to the *gist*, or point between the parties on which an issue is finally joined—either an issue of fact for a jury, or an issue of law for the court. In its principle and scheme, I humbly conceive a better, or neater, or more useful system, could not well be devised for juridical contentions. One of its main advantages over other systems is that it is adapted to the trial by jury, and leads to a precision and certainty as to the points at issue, which less technical and more copious modes of statement do not produce. That in many instances we depart, in some degree, from its precise rules, by admitting general pleading, there is no doubt; but in others, where strict points of law are to be presented to the judges alone, we adhere to them with advantage. Many forms of action now in use are remarkably simple and concise. The framers of them appear to have classed,

according to principle, the various wrongs and infringements of rights, which society most commonly presented. Thus the writ of trespass is for any *forcible* injury to the person, goods, or property. The writ of trover is for any *conversion* of another's goods and chattels not forcible (though in practice it has now become frequently concurrent with trespass). The writ of debt for a *specific sum* due. The writ of covenant for any breach of agreement *under seal*. The writ of replevin for any *taking of goods*, but principally seizures for *distresses*. As however cases arose of special and peculiar circumstances, not falling within any of those strict and technical actions, the statute 13 Edward I. c. 24, gives the writ *in consimili casu*, under which are framed the actions *on the case* now so frequent in practice, and of which the far most frequent action, assumpsit (on unsealed contracts), is a branch. The actions on contracts of all kinds have naturally in the present state of society become the most ordinary subjects before the courts, far out-numbering the trespasses, and forcible wrongs, and the actions as to real property, which before the extension of commerce, and the vast increase of personal property, were the main subjects of litigation. Contracts, it is obvious, are infinitely diversified, often complex, often ambiguous, often perplexed with details, often obscure from generality,

Hence the action of assumpsit has frequently become lengthy, and nice and subtle in its statements. I have stated before how this cause has introduced into this action, and the action *on the case*, a variety and length of counts, which do not belong to the other actions in the fixed forms of the register. To describe a mercantile contract, a policy of insurance, a charter-party with any accuracy obviously requires length. If the statement is general, it does not convey the particular information—"brevis esse laboro, obscurus fio"—if it is particular, the danger of variance from the proof is increased, especially in verbal contracts, and those resulting from various letters. In the early stages of pleading the forms were very short and simple. Special actions of assumpsit were then unknown, principally because commerce of all kinds was in infancy.

Lord Coke says, "that in the reigns of Edward II., Edward I., and upwards, the pleadings were plain and simple, nothing curious, evermore having chief respect to matter, not to form of words." In the reign of Henry IV. and Henry VII. Lord Hale * says they were much longer but still "far shorter than afterwards, especially after Henry VIII.," when he says, "the judges became somewhat too curious therein," and pleadings degenerated from their

* Hist. of Common Law, 172.

ancient simplicity into length, and repetitions, and trivial niceties. Lord Hale ascribes this in great degree to the change from oral to laboriously prepared and written pleadings. It seems also to have arisen from the growing variety of contracts, transfers, and modifications of property of all sorts. Sheppard *, an author quoted by Mr. Brougham, who lived in the *time of Charles the Second*, mentions that "long pleadings were worse in action of *covenants*, for breach of *covenants*, actions of case for nuisances, and in avowries" (for rent, and damage by cattle, in replevin), and complains that "for small defects in some circumstances in the declaration the defendant will demur to it, and put the plaintiff to begin all again;" and he suggests various "cures" for these evils. Sir, all Mr. Sheppard's "balmes" for the diseases of pleading have been administered by the courts and the legislature with salutary effect. In the case just mentioned, an *instant amendment* is now allowed by the courts of the defect pointed out by the demurrer; and by Lord Somers' Act the demurrer must *call attention* to the *precise defect* by specifying it, or the objection cannot be made. No objection of form can now be made after a verdict has settled the merits of the cause. No defective allegation in pleading can be taken advantage of after trial, if the fact

* Sheppard's English Balme, p. 73.

thus imperfectly stated is of that kind, that it must be presumed the jury were satisfied of its truth before they could find a verdict. No costs are allowed when a judgment is arrested after verdict, which can only be done for a substantial defect. The courts have interfered, and reprimanded counsel for unnecessary length and perplexity in their pleadings. The case of this sort mentioned by Mr. Brougham, is an instance *sixty-eight years ago*, in the first year of George III., where there were 27 special pleas of great length. The result shows the rarity of the practice, its obloquy even at that day, and the efficacy of the remedy the court can apply. "Robinson" (who was a party interested and also a barrister) "in propria personâ showed cause against this report, *no other counsel caring to be employed*, and insisted he had a right to do what he had done, and that he thought the whole declaration necessary. The court strongly *inclined to fix some heavy censure upon him*, but desired that previously the question of right might be tried; and it was recommended by the court to Sergeant Hewitt, exparte Robinson, and Mr. Winn for the *defendants, to settle an issue* for that purpose, which they *did the next day on a quarter of a sheet of paper*, and it went down to be tried on the Northern circuit *." I am not aware of

* Yates v. Carlisle, 1 Black. 270.

any cases in the books of this excess of abuse in modern days. Had they existed, Mr. Brougham would not have resorted to a case near three quarters of a century ago. Cases have occurred not unfrequently, where the court have struck out the redundancies of the pleader from the declaration, compelling the parties or the attorneys to pay the costs; and if parties applied, they could do it still more frequently. Except special cases of assumpsit, and actions for nuisances, pleadings in trespass to try rights, and one or two other instances, the great majority of modern actions are not remarkable for length or intricacy of pleading. Its forms might, however, I think, be still further shortened in some instances, especially by striking out a number of the common counts (as they are called) which are often inserted without reason, and by referring from one count or plea to another, more frequently than is now done, in order to save repetition. Viewed as a whole, without dwelling on or exaggerating isolated abuses, I believe there is not a part of the judicial system which creates less serious evil, while its advantages are many. Mr. Stephen, following Lord Mansfield, well remarks, "to combine with the requisite *certainty* and precision the greatest possible *brevity* is now justly considered as the perfection of pleading. This principle, however, has not been kept in view

uniformly at every era of the science. For, although it appears to have prevailed at the earliest periods, it seems to have been nearly forgotten during a subsequent interval of our legal history, and it *is to the wisdom of the modern judges that it owes its revival and restoration.*"

Another proposition of Mr. Brougham is to remove some existing varieties in the laws of property throughout the country. Mr. B. says, "Were it likely to be useful, or could it be necessary, that by crossing a river we should get to a place where the whole of a man's children equally inherited his estate? That, by going down a few miles to Brentford we should reach a locality, in which specific provision was made in favour of the youngest branch of a family," &c. &c. If, sir, the question now were to form a code *de novo*, for the rising republic of New Britain, I quite admit it would be well to consider whether it were useful or necessary to have one large county, and some towns, exceptions to the general law of primogeniture. But when from historical circumstances we find these customs rooted and fixed in certain parts of the kingdom, when not a whisper of complaint, or a case of grievance, (that I am aware of) is heard from the men of Kent, or of the burgesses of borough English boroughs, on the subject of the peculiar laws of

descent and customs there existing, surely, sir, the only question is, what prospect of practical good presents itself to afford a motive to the change. It is not with our gavel-kind in Kent as it is with partible inheritance in France, where the law is compulsory, since the people in general have no power of remedying it by entails, and only a partial one of interfering with it by testamentary disposition. In Kent, if the people do not like it, they modify its effects by will, or by settlements. Mr. Humphreys * says, speaking of the abolition, "The only *sensation* to be imagined is in Kent, but the sentiments of that county, and particularly of the greater land-owners in it, may be fairly inferred from the various disgavelling acts which from time to time have been passed." Sir, as far as the sentiments of the county can be gathered from their acts, they would appear to be in favour of the custom; for no disgavelling act has passed since the 21st James I., and only seven acts before that time, the first being in the 31st Hen. 8. c. 3.† I incline to believe, that the law, by the sufferance of the land-owners, has produced a greater subdivision of property in that county than elsewhere; and if I am not misinformed, the old attachment to this among the other Kentish customs still operates on many classes, and induces them to leave the estate to descend among the sons, according to

* Humphreys on Real Property, p. 26.

† Robinson on Gavel-kind, p. 94.

law. If six Kentish yeomen have any feeling of this kind, I confess I hold that feeling a better reason for retaining the law, than can be found for its abolition in the dry notion of uniformity. If this doctrine is acted upon, where is it to stop? Without alluding to more serious instances, we must take away a sheriff from the city of London, give a second member to Abingdon, and reduce all our counties, parishes, and hundreds to the parallelograms of Mr. Robert Owen.

Mr. Brougham asks whether it is right that in London there should be a law for recovering property by attachment different from that established in the rest of the country. Here again, I should take the liberty of saying, if it is shown that the law there really works mischief, that may form a ground for inquiry: but to my mind it seems no objection to it that it does not exist universally. I believe, sir, that the principle of the proceeding in London, that of a creditor obtaining payment out of his debtor's property in the hands of a third party, is a beneficial one, especially in commercial towns. Perhaps it might be well to extend it to other places. At all events, when we consider that the peculiar courts and customs of the City of London form a connected system of usages and privileges, confirmed by various charters, sanctioned by acts of parliament; many of them favourable to commerce; and some resting on the footing of consideration actually paid, surely weighty inconveniences should be shown to jus-

tify the legislature in interfering with any part of them, though not in uniformity with the systems of other cities or places. Not a corporation or city in the kingdom would be unaffected if strict uniformity were required in all judicial courts and processes. There are cases certainly in which the conflictions of usage in different parts of the country have been eminently mischievous, as in the instance of weights and measures; but here the practical mischief was the ground for the alteration. The multitude of *coutumes* and jurisdictions abolished in France were a positive obstruction to alienation and improvement of land, and a source of litigation and uncertainty, besides being oppressive in many instances.

Mr. Brougham also objects to copyhold tenures, in which a principal diversity of customs in the country exists. Mr. Brougham, I think, overstates the inconvenience of the difficulty of a party possessed of copyhold land borrowing money upon it. A mortgage of copyholds by surrender on condition, is I believe a security of frequent occurrence. Mr. Humphreys says, "the tenant may also mortgage by means of a conditional surrender, to be void on payment of the loan with interest*." Mr. Watkins † (a great authority on the subject) gives the forms of

* Humphreys, on the State of the English Laws of Real Property, 2d edition, p. 144.

† Watkins on Copyholds, 3d edit. vol. i. p. 184.

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the surrender by way of mortgage, and the discharge on the money being paid off; and any one who reads these brief forms of about a dozen lines, and compares them with the verbose skins of parchment of a mortgage of freeholds, will perceive that the inferiority of copyholds certainly does not consist in the length, or complexity, or dearness of the instruments of mortgage or alienation. They are also mortgageable in equity (like freehold) by mere deposit of the copies of court roll*. The main real objections I apprehend, sir, to this tenure, are one mentioned by Mr. Brougham, viz., that copyholds are not extendible for the copyholder's debts on an elegit, like freeholds; and also another, that the interest of the copyholder is in some respects such as to discourage his improvement of the lands. Add to this, that though the mere documents of title are short and not expensive, the separate nature of the title creates expense and trouble in alienations of large estates of both freehold and copyhold land. The variety of the customs is also here an evil and a cause of expense—heriots are odious—fines are not in all cases fixed—and where it is necessary to bring actions in the Manor Court, great difficulties, and delays, and expenses occur, and what is more objectionable, the proceeding is often without appeal. A striking instance of this

* 19 Ves. Rep. 202.

sort, as to property of 10,000*l.* value, occurred lately to my knowledge. The decision was before the steward and his assessor. Mr. Brougham, I believe, and several other eminent advocates were employed, and from this unsatisfactory court, which sat at a tavern, the case could not be removed. The subject of copyholds seems to deserve investigation.

Mr. Brougham also proposes to introduce courts of arbitration (conciliation courts) from Denmark. He asks, "whether half the number of cases at present standing on the King's Bench paper would have appeared there, if the parties had the opportunity of going before a sensible arbitrator?" Why, surely, sir, every suitor in the King's Bench paper had, by our law, throughout the proceedings and till the trial, the opportunity of going before an arbitrator; that is, before a person selected by the parties to settle their differences. The law has in every way encouraged such a course, by making provisions, that wherever an arbitrator is named witnesses may be sworn, their reference may be made a rule of court, the award may be enforced by the orders and attachments of the court, it may be set aside by the courts if erroneous. Such references, I need not inform you, are of every day's occurrence both out of court and in court; and they,

doubtless, would be more frequent, were it not that suitors are, in fact, found to prefer in general a regular and authentic decision by judge and jury to domestic adjudications. When the award is made, it perpetually happens that the losing party harasses his opponent, by proceedings to set it aside for unfair conduct by the arbitrator, as being against law, or for want of proper notice of the meetings, or some other cause. And it is not unfrequently necessary to bring an action to enforce it; or if the arbitrator has done wrong, the award is set aside, and all the expense of the reference is thrown away. Nor does this appear to be owing to any vice in our system as to arbitrations, since such tribunals and their awards must necessarily be subject to the revision and control of the superior courts of the country. At the assizes and Nisi Prius sittings, it is with difficulty that the judge and counsel can persuade parties to refer the cause instead of trying it. I am aware, that this is in great degree owing to all the costs of the trial having been at that late stage, in fact, incurred. But still the causes above noticed will, I believe, always have much influence in disinclining parties to refer their disputes. Mr. B. would probably say the difficulty arises in agreeing on an arbitrator; but where there is a real desire to settle amicably, I believe this point is

not very often an insurmountable obstacle. I confess I can see no difference between the arbitrator fixed in an arbitration or conciliation court, and an arbitrator selected between the parties, which should incline the parties to prefer the former, who would not be of their own choosing. In cases of any difficulty, it would equally be necessary to have the assistance of counsel or attorneys at the arbitration, and then what is it but a trial before a court? It would seem to be impossible to render the award final any more than that of a chosen arbitrator, according to our plan, since a subordinate officer of this kind must necessarily be subject to the superintendence of the superior courts. To allow him to make unimpeachable awards, and order executions and levies, without any control of a higher court, would be vesting in such an arbitrator an authority not enjoyed by regular judges of inferior courts. To know to what extent, and for what reason, the plan succeeds in Denmark, we should know accurately the nature and constitution of the legal system, and of the courts in that country—since the institution must depend, for its beneficial influence, on its relations with the other institutions in conjunction with which it works. In Western Prussia this experiment has of late been tried under a decree of the king

commanding the inhabitants of every commune to elect a general arbitrator, not a lawyer, who is sworn into his office, and the inhabitants have the option of taking small disputes before him. If County Courts and Juries had been settled institutions in Prussia as they are here, probably the government would not have introduced this plan.

Mr. Brougham wishes to accomplish the object of bringing parties together before the commencement of a litigation. According to the laws of Bavaria, it is now compulsory on the plaintiff and defendant to meet, with their lawyers and witnesses, and endeavour to settle their differences before they can commence a suit. How the plan succeeds is hardly, I believe, yet known. Such a shaking of hands by compulsion would not seem very likely to heal breaches, and why the courts should be closed against two parties, *sui juris*, who choose, deliberately, and without any mischief to any third party, to settle their disputes *arbitrio judicis*, I do not very well see.

Mr. Brougham proposes to abolish the law of arrest for debt, in the commencement of a suit, or at least, only to allow of it in case of an intention of flight. He would "first prevent the debtor from wilfully absenting himself, and thereby causing delay:—secondly, to give the

debtor notice of the cause, that he might be able to defend himself if in the right, and to yield if in the wrong:—thirdly, to give him no unnecessary inconvenience till he be actually found indebted." No doubt, sir, to reconcile all these comforts to the debtor with all these securities to the creditor, is a most desirable object; but, as it so often happens, that debtors will not yield if in the wrong and will defend themselves though not in the right, it seems very difficult to provide for Mr. Brougham's various objects consistently with one another. That the security of the creditor is the primary object, there can be no doubt, and as long as many evasive debtors would run away at the sight of process, and as it is impossible beforehand to know the evasive from the honest debtor, there seems no other plan of securing the creditor, than to subject all debtors to one law.

Mr. Brougham complains, that "at present it is the custom to presume the debtor in the wrong;" but, surely this is not an unfair presumption, and the best proof of it is, that according to the returns of the trials in London and Middlesex and of the verdicts, it appears, that for any verdict found for a defendant, there are at least twenty-five found for the plaintiff. A man will defend a cause and delay payment of his liabilities, though without reasonable chance of success, but he will not so easily put

himself in motion to commence a law-suit. If we took those cases alone where the action is for a debt sworn to by the plaintiff, I should think the verdicts for the plaintiff would be as thirty or forty to one for the defendant. There are occasional cases of abuse of the right of arrest, undoubtedly, but the oath of the plaintiff is surely a considerable security. And the evil which Mr. Brougham would avoid, of exposing respectable and solvent individuals to this rigour, is in practice very much effected under the present system, by the attorney and the sheriff's officer taking a bail bond, without any actual arrest or imprisonment taking place. The shock to dealings on credit in trade which an abolition of arrest must occasion, would be very considerable, and though the too unlimited credit now given by tradesmen is an evil, a sudden change of system, surely, could not be desirable.

I must beg you, sir, to overlook the haste with which these remarks have been necessarily thrown together. I regret that I cannot notice other points. I trust that no expression has escaped me wanting in becoming respect to any individual. I could have wished that the occasion and leisure from other pursuits had left me time to make this letter more worthy of your perusal. The motive of contributing, however humbly, at once to preserve

and improve some of our legal systems (by which alone I have been influenced to address you) may, in your mind, excuse the feebleness of these observations.

I have the honour to remain,
with the truest respect,
Sir,
your most obedient humble servant,
C. E. DODD.

5, *King's Bench Walk, Temple.*
20th February, 1828.

This statement should have appeared at p. 13, 14.

Causes tried in the King's Bench at Nisi Prius, in London and Middlesex, before Lord Tenterden, C. J.

A. D.	
* 1825	1048.
1826	1554.
1827	1356.

Average for the three years, 1319.

* The Act 6 Geo. IV. c. 96, requiring bail in all cases on Writs of Error, came into operation on 5th July, 1825.

THE END.

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REMARKS, &c.

THE Act of the Scotch Parliament 1685, cap. 22, conferred a power upon landowners to settle their estates in perpetuity upon such heirs, and under such conditions and provisions as they might think fit, and in such a manner as that the estates settled should not be alienable or affectable for the debts of the proprietors, who might successively enjoy them.

The remark made by Blackstone, when treating of the English statute *De donis Conditionalibus*, that the fetters of estates tail were attended with a legion of mischiefs, is most truly applicable to the entail system sanctioned by the Scotch act of 1685. It is on all hands admitted to be injurious to agriculture and commerce. It authorized the making lands inalienable. It deprived creditors of the remedy competent to them of attaching the estates of their debtors, by which every now and then the commercial part of the community is in a more especial manner subjected to heavy losses; and it is

in no small degree injurious even to the heirs themselves, who, after coming into possession, are placed in a situation little better than that of mere life-renters, having, as Lord Stair observed, no more than the shadow of their estates. Besides, so vague and so ill-defined are the provisions of the act, that it may be safely asserted that it has given rise to more law-suits than have originated from any law of any other country in the world.

Of the baneful effects of the entail system, the Committee appear to be sensible, and they quote with approbation the following remark of Dr. Smith: "In the present state of Europe, when small "as well as great estates derive their security from "the laws of their country, nothing can be more "completely absurd than entails. They are found-"ed upon the most absurd of all suppositions, the "supposition that every successive generation of "men have not an equal right to the earth, and to "all that it possesses, but that the property of the "present generation should be restrained and re-"gulated according to the fancies of those perhaps "who died five hundred years ago."

But although the Committee seem to be fully sensible of the mischief, the impolicy and absurdity of entails, and although from their own showing, it appears that they are multiplying at a rate which seems to be uniformly accelerated, yet it is much to be feared that the plan proposed by the Committee, as embodied in the Resolutions appended to their report, even should it be adopted by the legislature, would go but very little way to cure the evil.

It is to the 11th, 13th, and 14th Resolutions, as being the most important, that it is here proposed briefly to advert.

According to the 11th Resolution, any fee-simple proprietor may still make an entail, by which he may bring under its fetters not only persons in existence at the time of making it, to be specially named, but also lineal descendants of the granter's body for two generations, comprehending children and grandchildren, and collateral relations for one generation, comprehending brothers and sisters, and their immediate issue, which lineal descendants, &c. may be descriptively fettered.

According to the 13th Resolution, all entails already made and established pursuant to the act 1685, are to subsist, and stand in full force during the lives of all or any of the heirs of entail called to the succession, in existence at a time to be fixed in the statute proposed to be passed; but from and after the death of the longest liver of the said heirs of entail, it is proposed that all prohibitive, irritant, and resolutive clauses contained in any subsisting entail against contracting debt, or granting annuities over the entailed property, or alienating it for onerous causes, shall cease and determine.

It may be safely assumed, that the average duration of any new entail to be made in terms of what it is proposed to allow by the 11th Resolution may be taken at a century. Thus after the country has suffered for nearly a century and a half under the effects of so pernicious a system, and now that about one half of all the landed property in Scot-

land is at this moment locked up under strict entail, it is proposed to sanction a plan, by which the remaining half may be put *extra commercium* for a century to come.

It is indeed proposed by the 13th Resolution to put an end to subsisting entails, upon the failure by death of all the heirs that may be in existence at a time to be specified in a statute to be passed. The average duration of entails actually subsisting may therefore be taken to be half a century at least. But supposing such subsisting entails to come to an end, the proprietors may of new make entails of their estates to endure for a century, according to the terms of the 11th Resolution.

The 14th Resolution runs thus, "That as many "subsisting entails contain prohibitions unsuitable "to the present state of the country, and of a nature "highly injurious, authority should be conferred "upon the Court of Session to declare all prohibit-"ory, irritant, and resolutive clauses contained in "any subsisting entail against contracting debt or "granting securities over the entailed property, or "alienating for onerous causes, to be no longer ef-"fectual upon production of evidence instructing "the consent of every heir of entail in existence."

It is much to be apprehended that very few entails will be put an end to in this way. In general so many persons have an interest opposite to that of the heir in possession, that however trifling such interest in many cases may be, still the consent of all the existing substitute heirs is hardly to be

looked for. If at any time such consent should be obtained, it would probably be upon some such condition, as that the estate, or such part of it as may remain after relieving the heir in possession, shall be put under a new entail, probably for a century, in terms of the 11th Resolution.

The English statute *de donis* was, so far back as the fifteenth century, found to be so intolerably mischievous, that by a kind of *pia fraus*, as it has been called, certain fictitious proceedings were sanctioned, and adopted by the courts for the purpose of evading it. And now, according to the practice that has prevailed for a great length of time, any tenant in tail of full age having the possession may defeat and put an end to his entail by such process. The end was laudable, but the means of attaining it, besides being attended with a heavy expense, were just as absurd as can well be imagined; insomuch that Blackstone, after stating that the ill consequences of fettered inheritances are now generally seen and allowed, and of course the utility and expedience of setting them at liberty are apparent, goes on to say, that it hath often been wished *that the absolute fee-simple should at once be vested in every tenant in tail of full age*, without any process whatever. Indeed, an enlightened writer of the present day goes further, "The estate tail," says Mr. Humphreys, "is the most objectionable, "both in its existence and the mode of destroying "it, for unlike every other interest, it is scarcely "ever suffered to die a natural death. Any mere "regulation upon it (as by substituting some less

" costly bar than a fine or recovery) would only im-
" pose the necessity of keeping alive so uncouth an
" institution. *Nothing short of abolition will serve.*"

In the present day, no act of Parliament can or ought to be dealt with, as the English statute *de donis* was dealt with by the courts in England, during the reign of Edward the fourth. The act 1685, cannot possibly therefore be got the better of in this way. But were an enlightened legislature to be made aware of its evil consequences, little doubt can be entertained that relief would be afforded, in some way that would be satisfactory.

Bad though a system may be, yet if it has prevailed for a length of time, it is not always the safest course to proceed to the immediate abolition of it. To permit heirs of entail in possession in Scotland all at once to do away the entails of their whole estates, as was done in England, might be thought by many to be going too far. On the other hand, if we are to wait for relief until it is to be obtained by any mode pointed out by the Committee, we may wait long enough; and, at all events, relief even to the longest lived of the present generation must be altogether out of the question.

A plan has occurred to the writer of these Remarks, by which it has appeared to him that our entails may be done away gradually; in a manner calculated to give some present relief, with as little prejudice to existing interests as possible. It shall be here shortly stated.

An act of Parliament to be passed, by which it shall be enacted as follows:

1. That the heir in possession, whom we shall call A, provided he be of age, shall have it in his power to make one-third part of the estate *fee-simple*, subject to one-third part of the debts and burdens that may affect the whole estate.

2. That the heir who may succeed to A, whom we shall call B, provided he be of age, shall have it in his power to make another third part of the estate *fee-simple*, subject to one-third part of the debts and burdens.

3. That the heir who may succeed to B, whom we shall call C, provided he be of age, shall have it in his power to make the remaining third part of the estate *fee-simple*, subject to the remaining one-third part of the debts and burdens.

Perhaps the best way of carrying such an act into effect would be, to require that the heir intending to make a proportion of an entailed estate *fee-simple*, should call the substitute heirs in an action before the Court of Session, in order that the proportion of the estate to be disentailed, should be adjusted and defined at their sight. Of course the mansion-house and contiguous grounds to be reserved to the last.

Under such a law there can be little doubt, that one-third part of the entailed estates in Scotland would soon be set at liberty. From such a change, there would result many advantages, among which may be enumerated the following:

1. In so far as the proprietors, who now to a

certain extent would hold their estates in *fee-simple*, might think fit to sell, great tracts of country would be cultivated and improved. Upon lands now lying almost waste, mansion-houses would be built, trees planted, and inclosures made. This never fails to be the case when an extensive estate is somewhat broken down, and comes to be sold in parcels to enterprising purchasers.

2. Such heirs of entail as owe debts would be enabled to discharge them very much to their own comfort, and to the great advantage of the commercial part of the community, to whom such debts are chiefly due.

3. Such heirs as may have borrowed money upon annuities, at heavy rates of interest, would be enabled to redeem them, and thus relieve their incomes from a heavy charge. It is a hardship attending more especially the situation of heirs of entail, that they are frequently compelled to borrow money in this ruinous way. And it is well known that from this circumstance it results, that a large portion of the rents of entailed estates in Scotland is annually remitted to wealthy capitalists in London, for whom the heirs of entail in possession are frequently little better than mere trustees or stewards.

4. It is humbly thought that the interest of expectant heirs in existence would be as little affected by this plan as by any that can be devised, consistently with a gradual liberation of estates from the fetters of entails.

But what appears to be the chief recommendation of the plan is, that it is calculated to give some relief to the present generation, a thing which it is

altogether in vain to expect from any thing that has been proposed by the Committee.

Suppose the estates now entailed to be gradually loosed from the fetters of our present system in the way that has been suggested, it will become necessary to consider how the owners shall be empowered to deal with them in framing future settlements. This will no doubt form a very important subject of consideration; but it is to be hoped that no rule will be sanctioned, permitting landowners to make entails, under which their estates may be put *extra commercium*, and rendered unaffectable for debts for any considerable length of time. Perhaps to allow them to settle their estates by a destination in favour of such heirs and substitutes as they may think fit to appoint, in such a manner however as that every heir or substitute once succeeding to the estate shall have all the rights and powers over it that were competent to the maker of the deed, would be to confer upon them all the rights that landed proprietors ought to have in making settlements to take effect on their deaths, consistently with the good of the community at large.

In the course of the discussion that will probably take place upon the important subject of the Report, it may perhaps be alleged by those hostile to any change, that the substitutes in entails have rights of which they cannot be deprived without full and adequate compensation. If by this be meant, that upon putting an end to an entail, the estate, or rather its value, must become a fund of distribution among the heir in possession and the substitutes according

to their respective interests, it will upon a very little reflection appear that any distribution of this nature never can take place. The value of reversionary interests of persons in existence may be computed; but the values of the interests of possible substitutes in an entail can never be computed. Attend to this simple case: A, an heir of entail in possession of an estate destined to heirs-male, is unmarried. He has brothers B, C, and D, all of whom are also unmarried. It would be an easy matter to compute the values of their respective interests, if we assume that not one of them shall ever marry, and have a family. But this we have no right to assume; for A may marry, and have sons, —an event which, should it take place, would reduce the values of any interest competent to B, C, and D, to very little. Then, in addition to this, B may marry, and have sons, which would reduce the values of the interests competent to C and D to little or nothing. C and D may also marry, and have sons. It is impossible, however, to ascertain the probability of such events as these; and such being the case, it follows that the values of the interests of substitutes in a Scotch entail, if you are to include the possible as well as existing substitutes, can never be determined.

But a very little consideration may suffice to show, that if any such claim of compensation should be brought forward, it could not for a moment be listened to. It is for the supreme power vested in the legislative body to determine, from time to time, according to what mode property shall be possessed

and settled by the individual owners. In legislating upon such a subject, the public good ought no doubt to be the object. No man ought to be allowed to possess or settle his property, in a way that may tend to the prejudice of the community at large. Still, however, although the legislature should in its enactments lose sight of the public good, the country must submit. Of this indeed, the act 1685 itself, of which so much has been said, affords a striking proof. For what was it that this act did? It gave a right to landowners to settle their estates in perpetuity, to render them for ever inalienable and unaffectable for the debts of the successive owners; in short, to put the whole land of what is now a highly commercial country altogether *extra commercium*. While it thus conferred such rights upon the landowners, it on the other hand took away the rights of all other classes of the community without exception. And now, unless a remedy be applied, the time cannot be far distant when it will be beyond the power of any one in the kingdom, whatever his industry, wealth, or merits may be, to acquire by purchase or otherwise the property of a single acre.

To repeal such a law as this, would be merely to revert to principles from which the legislature, consistently with a regard to the public good, ought never to have deviated. It may be said indeed, that at making a change, that upon reverting to just principles, the interests of expectant heirs ought to be as tenderly dealt with as circumstances may admit of. This may be all very right; and ac-

cordingly, if the mode of gradually and partially disentailing estates suggested should be adopted, it is humbly thought that expectant heirs would be made to suffer less than by any other mode of doing away the evil that can possibly be devised.

The foregoing remarks were communicated by the writer of them to several Gentlemen, who, he understood, took an interest in the subject; and those who did him the favour to notice them, expressed an opinion favourable to the plan of doing away our entails, gradually and partially, in the manner proposed. Some of them, however, suggested that, if it should be made more analogous to the mode of doing away entails in England, it would stand a better chance of meeting a favourable reception from the legislature, especially from that part of it which is composed of English lawyers. They assumed, that no tenant in tail in England can bar the entail of his estate, without the concurrence of the remainder-man, next in the order of succession; and hence they inferred, that it would probably be objected by those imbued with English maxims, that in so far as regards Scotland, no heir of entail in possession ought to be allowed to take any step for disentailing his estate, without the concurrence of the next substitute.

With great deference, the suggestion has been made under a misapprehension of the law and practice of England; and as such a misapprehension seems very generally to prevail in this country, it is

humbly thought that it may not be amiss to state what the law and practice of the sister kingdom really are.

Estates tail, with the power of defeating them by fine and recovery, constitute at this day the principal mode of *settlement of lands* in England. But an *estate tail* is never given to the first taker, ordinarily the parent; and the reason assigned for this is, that he might instantly bar it. He is therefore made *tenant for life,* with remainder to his first and other sons successively, according to their seniority *in tail,* &c. Now, it is very true that the father being made *tenant for life,* cannot alone bar the entail; he can only do so in concurrence with his son, the *tenant in tail,* upon his attaining majority. But if the father should die, and the son succeed, without the entail having been barred by them during their joint lives, then he, the son, *tenant in tail,* being of full age, may *alone,* and without requiring the consent of any one, bar the entail by suffering a recovery. In short, the son, *tenant in tail,* can, after the father's death, acquire the absolute ownership of the property, and dispose of it as he pleases, and so, if the estate is left in a course of descent, may every remainder-man.

Thus we see that in England, the entail of the *whole* estate may be defeated and put an end to by the *tenant in tail* in possession of full age, without his requiring the consent of any one; whereas, according to the plan of gradually disentailing estates in Scotland, which has been suggested in the remarks, it is proposed, that the heir of entail in pos-

session and of full age, should have the power of disentailing *no more than one third part* of the estate. According to this plan, it is humbly thought that the interest of the next substitute is sufficiently attended to; for instead of succeeding to the whole estate strictly entailed, he would succeed to two-thirds of it, with a power, however, to make one of these two-thirds fee-simple. It is humbly thought, therefore, that on no account ought it to be put in the power of the next substitute to defeat a measure, which, if carried into effect, could not fail to be attended with incalculable good to the country.

It may not be here improper to remark, that although *tenant in tail* in England can so easily defeat his entail by certain fictitious proceedings carried on in the courts, yet even Mr. Sugden, an eminent practitioner at the chancery bar,—a gentleman, as appears from his writings, cautious on the subject of innovation,—is inclined to make the mode of barring entails still more simple and easy. He proposes, that every *tenant in tail* of full age should be allowed to put an end to his entail by the execution of a deed declaring his purpose to that effect. This no doubt would be an improvement, as it would be doing, in a direct, intelligible, and common sense way, what at present is done in a way repugnant to common sense, and unintelligible to any but a few of the initiated. Besides, there are niceties and technicalities in the processes of fine and recovery—errors in regard to which, discovered at an after period, have often occasioned much inconvenience and distress. Even this proposed improvement

does not, however, satisfy Mr. Humphreys, who, in a correspondence with Mr. Sugden, advocates the utter abolition of the entail system.

In short, it does not appear that the plan proposed has any thing to fear from those who may have imbibed the maxims of English law. These maxims, it is well known, are decidedly hostile to every thing of the nature of perpetuities. Indeed, it is rather thought that it would come as a surprise upon English lawyers, were they to be told, that in this the nineteenth century, a system flourishes in full vigour in Scotland, which, so far back as the fifteenth century, was in England branded "as the common grievance of the realm."

It only remains to note the authorities in proof of what has been stated to be the law and practice of the sister kingdom. They are as follows: Blackstone, book ii. chap. 7, and 21. Barton's Conveyancing, 2d edition, vol. i. p. 214. Humphreys on the Law of Real Property, tit. iii. chap. 2. Sugden's Letter to Humphreys, 3d edition; and Mr. Humphrey's Reply.

10th September, 1827.

OBJECTIONS to what has been stated and suggested in the Remarks considered and answered.

Some of the gentlemen who have had an opportunity of seeing the Remarks have been pleased to offer objections to what has been therein stated and suggested. The objections, at least the substance of them will be here stated, after which the writer of the Remarks proposes to take the liberty of considering them in their order, and of making such answers as he hopes will tend to obviate them.

OBJECTION I.

The law of entail, as it is sanctioned by the Scotch act of 1685, is founded on just principles, and, instead of being injurious, has a beneficial tendency. Of course, any proposition or plan for doing it away, either all at once, or even gradually, ought not to be entertained or listened to.

OBJECTION II.

There were entails in Scotland prior to 1685. The act did not innovate the law as it then stood; nor did it infringe upon, or take away, any rights then existing. The substitute heirs of entail have vested rights, and it is not competent to touch them or take them away, at least without giving compensation. But the proposed plan trenches upon such

rights. To carry it into effect would be to commit a robbery upon posterity.

OBJECTION III.

Heirs of entail have already obtained relief from the act 10th Geo. III. cap. 51, and the act of 5th Geo. IV. cap. 87. With the relief afforded by these acts, they have good reason to be satisfied.

OBJECTION IV.

Such a division as that proposed cannot be well carried into effect. If there be a large mansion-house, suited and proportioned to an extensive estate, it will lose much of its value if it be attached to merely a third part of the estate. In such a case, the estate will bring less, should it be sold in three lots, than if it were to be sold as a whole. The difference would be so much lost to the country.

OBJECTION V.

If the plan should be entertained, still it should not be allowed to be acted upon without the consent of the apparent heir. The situation of an apparent heir to an entailed estate is such, that he may obtain credit on the prospect of his succession, and no plan should be sanctioned which may go to affect the interest of his creditors.

OBJECTION VI.

It is not expedient at this juncture to touch or make any alterations upon the Law of Entail. The time has not yet arrived for doing so.

To these OBJECTIONS *the following* ANSWERS *have occurred.*

I.

The impolicy and mischievous tendency of entails having been made manifest, by lawyers so very eminent as Lord Stair in our own country, by Blackstone in England, and the Chancellor D'Aguesseau in France, and the fallacy of the assumption upon which they are founded, viz. "That every succes-"sive generation of men have not an equal right to "the earth and all that it possesses," having been pointed out by Dr. Smith, it may well be deemed superfluous at this time of day, and indeed almost presumptuous, to enter upon any laboured discussion of the general principle. The writer of the Remarks, however, hopes he may be forgiven, if he should take this opportunity of making a few observations, more particularly applicable to our Scotch act of 1685, and of adverting to a state of things which it has a tendency to produce in the course of no long time. From the view to be given of the consequences to which it leads, we will be

the better enabled to see and appreciate the true character of its principle and its policy.

The act has no preamble. It does not set forth any cause or reason of its enactment; it does not premise, that to authorise or sanction entails would be for the good and well-being of the realm, but it at once proceeds to statute and declare, "That it "*shall* be lawful to his Majesty's subjects to tailzie "their lands and estates, and to substitute heirs "in their tailzies, with such conditions and provi- "sions as they shall think fit, and to affect the said "tailzies with irritant clauses," &c.

But although the reason of enactment does not appear on the face of the act itself, yet the causes which led to it are known, and have been very fully explained by Mr. Laing, in his History of Scotland. "En- "tails," he observes, "had already been introduced "in a few instances, but were reprobated, as repug- "nant to the genius of the laws. Corruption of blood, "which *obstructs* the course of succession, was a pe- "nalty never incurred as the consequence of *attain- "der*, unless it were inflicted by an act of *dishabita- "tion*; and the estates relying secretly on this maxim, "that nothing more could be forfeited than the per- "son attainted was entitled to alienate, passed an "act by which *lands might be entailed to perpetuity*, "and the rights of an endless series of heirs reduc- "ed almost to an usufructuary interest during their "lives. Under the pretext of securing their estates "from alienation or debts, the nobility undoubted- "ly expected to preserve their families, in the event "of an attainder, from the forfeiture of more than "the liferent interest or escheat of an heir. The

" Commissioner consented to the act, to perpetuate " his own acquisitions to his family ; *and from the* " *tyranny of James, entails were introduced into* " *Scotland, when the rigour of the feudal system* " *had almost expired.* In a commercial country " about a fifth or a third part of the lands is exclud- " ed from commerce, and entails will continue to " increase, until the magnitude of the evil requires " an extensive redress."

Here then is the true cause of enacting the act 1685 explained. It may be noticed in passing, that Mr. Laing probably underrates the quantity of land locked up under entail, when he wrote his history. Be that as it may, the number of entails has increased prodigiously since that time.

It has been stated that the act 1685 has no preamble. It so happens, however, that the act 10 Geo. III., passed in the year 1770, with the view of giving some relief to heirs of entail, has a preamble, which, after reference to the law of entail as then existing, proceeds thus :—" Whereby the cultiva- " tion of land in that part of the kingdom is greatly " obstructed, and much mischief arises to the public, " and which must daily increase so long as the law " allowing such entails subsists, if some remedy be " not provided; wherefore, to prevent a mischief " and inconvenience so hurtful to the public, Be it " enacted," &c.

With reference to this act 1770, all that it is proposed to remark in this place, is, that its preamble furnishes ample proof, that more than half a century ago, it was made out to the satisfaction of Parliament, that much mischief even then had arisen

to the public, from the act 1685, and certainly if the mischief which it had caused was great then, a very great addition has been made to it since.

It is now proposed to advert to the state of things which the act 1685 has a tendency to produce, and which it will infallibly produce if a remedy be not applied. The landowners, it is to be observed, in virtue of the powers conferred upon them by the statute, might long ere now have put the whole lands in the kingdom under strict entail. Let us suppose for a moment that they had done so, and then let us consider what in such a case would be the now state of things.

In the *first* place then, in so far as regards land, not a man in the kingdom could exercise the most essential rights inherent in the notion of property. The heir of entail, and by the supposition, no other could be in the enjoyment of a land estate, would be a mere usufructuary. He would have no power to sell or alienate the estate, nor to contract debt upon the security of it, all such rights having been taken away.

In the *second* place, all the other classes of the community, the great body of the people, would be deprived of the right to acquire a property in land, by purchase or otherwise, and creditors, who may have lent their money to heirs of entail, would be deprived of the right to attach the land for payment of their debts. The hope of acquiring a property in land, which is one of the most powerful incentives to industry, would be completely taken away.

There would thus result a division of the people into two classes. The one a class of landholders, perhaps two or three thousand in number, limited and restrained in the use of their property, and indeed deprived of the most essential rights inherent in the notion of it. The other class would include all the other members of the community, amounting in number to somewhat about two millions, deprived as they would be of ever acquiring the right to obtain the property of a single acre. Hence there would exist a line of separation between these two classes, which would be for ever impassable, as much so, as the line which separates the Castes of India. It is hardly possible to conceive a state of society more unfavourable than this would be to the advancement of knowledge, the acquisition of wealth, and the general interests of mankind. It will no doubt be said, that this is not what has actually happened. It is a mere hypothetical statement. The landowners have been only exercising the powers conferred upon them gradually, and even at this time there is a considerable quantity of land still unentailed.

But surely this is a very lame defence of the policy of the law; for it amounts just to this, that the act has not hitherto produced all the mischief that it is capable of producing, and has a tendency to produce. If we look to the fact, we find, that in 1764, when an attempt was made, as it is understood upon the suggestion of Lord Mansfield, to obtain an alteration of the law, there had been put under entail $\frac{1}{5}$ or $\frac{2}{10}$ of all the land in Scotland, and that from 1764

to 1825 there had been put under entail about $\frac{3}{10}$ more, making together $\frac{5}{10}$ equal to one-half of the whole; and that since 1825 many more entails have been put on record. In short, the making of entails is going on at a rate that is uniformly accelerated; and it must be evident to every one, that the time cannot be far distant when the whole land of the kingdom will be put *extra commercium*. It is the tendency of the act 1685 to bring about this state of things, and there can be nothing more certain than that it will do so, if a remedy be not speedily applied. Does it not follow, that an act which necessarily leads to such consequences is altogether impolitic and vicious in its principle?

II.

Prior to 1685, there did exist what were called entails; but then these were little better than mere destinations. The hands of landowners were not, and could not, be so tied up as to prevent them from selling and alienating for onerous causes, nor were the hands of creditors tied up so as to prevent them from attaching the land for payment of the debts that might be owing to them. It is true, indeed, that one case occurred, viz. that of Stormonth, in which the Court of Session found an entail prior to 1685 good against creditors. But this decision was pronounced in bad times, and has been reprobated by all the lawyers. At deciding a case in 1815, the late Lord Meadowbank, with reference to the case of Stormonth,* took an opportunity of expressing

* Hamilton *against* M'Dowall, 3d March, 1815.

himself thus; "I am not now speaking from my "own authority, I speak the unanimous judgment "of this Court, while Lord Justice Clerk Miller and "Lord Braxfield sat on the Bench. It was the opi- "nion of the Court in the case of Agnew of "Sheuchan, that the case of Stormont was wrong "decided, and that entails had not a foot to stand "upon but the statute 1685. They are the mere "creatures of that statute."

But even although the law had stood otherwise, although it should have admitted the making of strict entails prior to 1685, this could be no reason why a Legislature, with a more enlarged experience, should abstain from examining the policy of it, and from altering and repealing it, provided it should be found vicious in its principle, mischievous in its consequences, and altogether unsuited to the present state of society. The truth, however, is, that at the time of passing the act 1685, it was not competent for any one to make a strict entail.

It is said that the act did not innovate any thing, or take away or infringe upon any rights. That the act was an innovation upon the common law has just been shown, and that it invaded and took away most important rights, has been fully demonstrated in the answer to the first objection.

No doubt, it has resulted from the state of things introduced by the act of 1685, that there are substitutes, expectant heirs under entails, whose hopes of succession would be affected by an instant and total abolition of it. According to the plan suggested, however, the value of the interests of substitutes existing at the date of disentailing the first

portion of the estate, even should it be supposed that they have an interest, would hardly, if at all, be affected. But any injury which this class of persons might sustain, even from an immediate and total repeal, would be the merest trifle compared to the injury which the country at large has sustained, and still more may sustain, from the non-repeal. By the act, the rights of the great body of the people, through all generations, were invaded and taken away, and supposing it to be at once repealed, the effect would be merely to restore the people to those rights, which they had at common law, at the time of passing the act, and which, consistently with good policy, ought never to have been taken from them.

Sir John Dalrymple, the zealous defender of entails, and to whose influence it was in a great measure owing, that a change of the entail law projected in 1764 was defeated, never entertained a doubt of the competency of Parliament to repeal the act 1685. The language used by Sir John is, "That "the same legislative power which gave its sanc- "tion to entails at one period, may withdraw it "from them at another." He never once hints at any such thing as that vested rights in the substitutes must stand in the way of a repeal, or that it would be necessary to make compensation to such substitutes for the eventual disappointment of their hopes. He took it into his head, indeed, that *many hundred years* would elapse before the entailing of estates would make much progress; and it was very much upon this assumption that he founded his

opposition. But the event has in an extraordinary degree falsified his prediction. In short, had Sir John Dalrymple lived till this day, he must in candour have admitted that the time for making a change had arrived.

When the statute *De donis conditionalibus* was defeated by the judges in England, no regard was paid to the rights of the remainder-men. It has been said, indeed, that this was an irregular mode of doing away the statute, but it has been admitted on all hands that the end was good, and that if it had been brought about by an act of the legislature instead of a decision of the judges, the measure would have merited universal approbation.

If there should be any thing in the objection of vested rights, such an objection would apply to the state of entail law of England, even as it stands now. The tenant in tail in possession, being of full age, may bar his entail by the fictitious process of a recovery. But if he should die, before suffering such recovery, the remainder-man would succeed. In short, the remainder-man has a hope, an expectation of succession, which can only be disappointed by a process of recovery carried to a conclusion during the life of the tenant in tail. The remainder-men in an English entail, therefore, might even perhaps on stronger grounds than the substitutes of a Scotch entail, object to any further interference with their interests, and especially might they object to the abolition of the process of recovery. Yet Blackstone, after stating that *the ill consequences of fettered inheritances have been generally seen*

and allowed, and of course the utility and expediency of setting them at liberty are apparent, goes on to say, that it hath "often been wished, that "the process of this conveyance was shortened "and rendered less subject to niceties, by either "totally repealing the statute *De donis,* which per- "haps, by reviving the old doctrine of conditional "fees, might give birth to many litigations; *or by* ' *vesting in every tenant in tail of full age the same* "*absolute fee-simple at once,* which now he may "obtain whenever he pleases, by the collusive fiction "of a common recovery, *though this might possibly* "*bear hard upon those in remainder or reversion* "*by abridging the chances they would otherwise* "*frequently have, as no recovery can be suffered* "*in the intervals between term and term, which* "*sometimes continues for near five months together.*" Now it is here to be remarked, that although it appears evident that Blackstone highly approves of an alteration of the law, such as in many cases would go completely to disappoint the expectations of the remainder-men in an English entail, and might be the cause of preventing many from succeeding to the most valuable estates, yet he never once drops a hint that there could be any objection to such a course on the ground of vested rights in the remainder-men, or that upon an alteration of the law they should have a compensation. But what is specially worthy of remark is this, that supposing the mode of doing away entails by the process of recovery should be abolished, and the fee-simple should be at once vested in the tenant in tail in possession of full

age, by an act of the law, he observes, that the officers of court concerned in passing recoveries, would of course come to lose certain emoluments; and on this subject he expresses himself thus: "And if in "so national a concern the emoluments of certain "officers concerned in passing recoveries are thought "to be worthy attention, these might be provided "for in the fees to be paid upon each enrolment." The distinction seems to be this,—the officers would actually suffer in their patrimonial interest. They would be deprived of that which, by the law and practice of the country, they had long been in the actual possession of, and of that which had formed a part of their income. This seemed to be a case which deserved notice at least, and which perhaps might warrant a compensation. But as to giving compensation for the eventual disappointment of a mere hope or expectation, he does not seem to have entertained an idea that a claim on any such ground could be competent.'

It has been shown in the remarks, that to make a distribution of the value of an estate at putting an end to an entail among the heir in possession and the substitutes, if you are to include those *in posse* as well as *in esse* is quite impossible. It would be out of place here to go into any lengthened detail on this subject. But to those at all acquainted with the application of the doctrine of chances to calculations of the values of lives and reversions, the correctness of the remark will appear manifest. If therefore it be maintained, that the act 1685 cannot be touched until compensation be made to all

those having interest, existing as well as possible substitutes, it can never be touched. We have nothing for it therefore, according, to this view, but to adopt the monstrous conclusion, that a law enacted in bad times, for purposes that could not be avowed, and of a tendency the most mischievous, is to be held an irrevocable law, and that all future generations have nothing to do but to bear their sufferings under it as well as they can.

To maintain that a law of this description, or perhaps that any law, is to be held irrevocable, would be to maintain a very absurd proposition indeed. Mark how such a proposition stands refuted by a single question put by a writer of great and original talent. "Is it possible that the re-"straint of an irrevocable law should be imposed "on so many millions of living beings, by a few "score or a few hundreds, whose existence has "ceased? Can a system of tyranny be established "under which the living are all slaves—and a "few among the dead their tyrants?

The truth however is, that the question, could any such question there be, has in this instance been set at rest by Parliament itself.

The act 1685, has been already trenched upon in more instances than one. The act 10 Geo. III. cap. 51, and the act of Geo. IV. cap. 87, both contain enactments which materially affect the rights which heirs of entail had under the act 1685. Moreover, the act 10 Geo. III. affords proof, 1st. That in 1770, the legislature was fully sensible that the act 1685 had been productive of much mischief;

2d. That the mischief would increase *so long as the act should be allowed to subsist*, unless a remedy should be provided. In which words, it is clearly implied that the legislature is quite competent to abolish the system altogether, whenever it shall appear that the public good requires it. Indeed the argument may be carried further. It may be maintained, and with much appearance of reason, that if it can be shown that the act 1770, has not answered the purpose of giving relief, the legislature stands pledged to sanction such measures, as shall really and truly give relief, even should it go the length of a total and immediate repeal of the act 1685.

III.

It is not intended to go into any detailed examination of the act 10 Geo III. cap. 51, or of the act of 5 Geo. IV. cap. 87. But in general, it may be remarked, that instead of their being calculated to give relief to heirs of entail, there cannot be a doubt that their operation will tend very much to increase their embarrassments. Under the former of these acts, it may so happen, that an heir of entail coming to the possession of his estate may find his income loaded with a debt equal to six years free rent of the estate, provided his predecessor may have expended sums to a certain extent, on what may be called improvements and building a mansion house. It is true he may be discharged of the debt upon his assigning one third part of the free rents of the estate so long as he shall live, or until the debt be extinguished to those who may be

in right of the claim. It may be remarked too, that such are the numerous and minute requisites of the act 10 Geo. III. expressed not by any means in the clearest terms, that it is not an easy matter to comply with them; that accordingly mistakes are of frequent occurrence, which, although of the most trifling description, often lead to law-suits of the most vexatious nature. Indeed this act bids fair to be as fruitful a source of litigation as its predecessor the act of 1685. But when the act of the 5 Geo. IV. cap. 87, shall come extensively into operation, the heir of entail in possession may be deprived of two-third parts of the free rent of his estate, leaving him no more than a third. It is obvious that if an heir of entail should, previously to his succession, have incurred but a small portion of debt, he must, under such circumstances, become a pauper for life. How utterly degraded in such a state of things the landed aristocracy of this country is likely to become, must appear obvious to every one at the first glance.

It cannot escape observation too, that the working of the two acts must become a very complicated affair. Indeed in some cases it will become almost, if not altogether impossible to apply the rules prescribed by them, so incompatible are they in their enactments. In fine, it humbly occurs, that these two acts cannot by any means be regarded as remedial, and that instead of alleviating, they tend greatly to aggravate the evils of the act 1685. Indeed if the measure of a gradual disentailing suggested in the remarks should go

through, there can be little doubt that to repeal the two acts 10 Geo. III. and 5 Geo. IV., reserving all claims under them previously to the repeal, would be for the advantage of all concerned.

IV.

This is very much matter of detail. But surely there can be no more difficulty in carrying into effect the division of an entailed estate upon the plan proposed, than in carrying into effect the division of a fee-simple estate among three heirs-portioners. Should any difficulty occur as to the mansion-house, it might be properly enough given, without consideration, to the heir who may be in possession, when the third and last lot of the estate should come to be disentailed. In general, a large estate will sell better in three lots than in one. But if it should be otherwise, it is certain that no loss would accrue to the public. What is it to the public whether A sell his estate to B for L.100,000 or L.90,000, or what is it to the public, although A should give his estate to B for nothing? In such case, to be sure, A would be poorer and B would be richer. But the public wealth would just remain as it was, it would neither be increased nor diminished.

V.

To require the consent of the apparent heir, would be to clog the operations of the plan very much. There is the less reason too for requiring

his consent, because his interest would be less affected by carrying the plan into effect, than perhaps by any other that can be devised. Indeed, if he should have got credit, and unfortunately contracted debts, from people trusting to his right of apparency, both he and his creditor would be placed in a better situation, supposing his predecessor to have exercised the right of disentailing a third, than, if the law were to remain unchanged. This will be better illustrated by stating a case.

Let it be supposed that A is in possession of an entailed estate of L.3000 a year free rent, that B is his apparent heir, and that B has incurred debts to the amount of L.30,000.

Now, if the law remain unchanged, and B succeed as heir to the whole entailed estate, and if he be pressed to liquidate his engagements, he has nothing for it but to borrow L.30,000 upon annuity; and if he obtain accommodation to this amount, upon assigning the clear rents of the whole estate, L.3000 a-year, he may think himself well off. According to this view of the matter, he is a beggar for life, the whole free rent of the entailed estate going to the annuitant.

If, however, the proposed plan should be in operation, and A should have sold one-third part of the estate, then B would succeed to an estate of a clear L.2000 a-year, with the power of making one half of this reduced estate fee-simple. Now, suppose him to do so, and to sell land of the value of a clear L.1000 a year, at 30 years purchase; he would thus be enabled to pay off his whole debts, and he

would have a clear income of L.1000 a-year for life over and above.

Upon this branch of the subject, there is another important consideration to be attended to. The apparent heir may be an infant, and his father may be prevented from obtaining any relief, however much his situation may require it, for a long course of years, as no consent from an apparent heir during minority could be effectual.

VI.

So far from its being the case, that the time has not yet arrived for making an alteration upon the law of entail, it is much to be regretted, that an alteration was not made long ago. It would have saved much distress and misery to many individuals in possession of entailed estates, and a great loss of money to creditors, many of whom have been reduced to bankruptcy and ruin by the system. It would have prevented innumerable law-suits, and have placed the country at large in a far better and more prosperous situation. Wait for some years longer, and then there will be many more entails, and of course many more persons in the character of substitutes, complaining of having their expectations disappointed. Hence there may be looked for a more determined opposition to any remedial measure, at any future period, than now. Many of the most enlightened persons in the country thought that the time had arrived in 1764, and then endea-

voured to obtain a remedy; but it is well known that their endeavours were thwarted and defeated by a small junto.

As those who urge an objection of this nature will more probably be influenced by a reference to authority, than by any reasons that may be drawn from utility, or a regard to the common good, it may not be amiss to state, that seventy years ago, the greatest law authority in the united kingdom, viz. Lord Chancellor Hardwicke, just after his attention had in a more particular manner been directed to our Scottish Entails, addressed a letter to Lord Kames, bearing the date of 14th July 1757, the concluding paragraph of which letter runs thus: "As to the general mischief of your strict entails, "and the evil consequences of locking up the land "of a country *extra commercium*, I have been long "convinced of them, and rejoice to find a person of "your knowledge and experience in the law and "constitution of Scotland in the same way of "thinking. It gives me the better hopes *that it will* "*not be long before some proper remedy be applied.*" Kames's Elucidations, Art. 42, at the end.

In conclusion, it is humbly thought that it may not be amiss to look to what would be the working of such a plan as that proposed, supposing it to be adopted. The best way of showing this seems to be, to state a particular case, which we shall suppose to be as follows:—

A has an estate, the yearly free rent of which, after deduction of public burdens, is L.6000.

There is of jointure to a widow L.600.

The former heir has expended L.20,000 upon improvements, Of course A, while he lives, must pay off $\frac{3}{4}$ of this sum, at the rate of L.1800 a year, being at the rate of $\frac{1}{3}$ part of the free yearly rent, after deducting the widow's jointure.

A has incurred debts to the amount of L.30,000, and has been obliged to borrow money, upon annuity, at the rate of 12 per cent. to pay off L.25,000 of it to urgent creditors, of course he still owes L.5000, which we shall suppose he has at 5 per cent.

Now, upon these suppositions, A's net income will be found to stand thus,

Free Rent, ...		L.6000
Widow's Jointure, . . .	L.600	
Annual sums to be paid for improvements,	1800	
Annuity at 12 per cent. of L.25,000,	3000	
Interest of L.5000 remaining debts, .	250	
		5650
Remains,		L.350

Thus there would be left to A, no more than L.350 of income, which would be little more than sufficient for the payment of factor-fee and the ordinary charges of business.

But if we suppose the plan to have been in operation, and that under it, A had made fee-simple, and sold a third part of the estate at 30 years purchase, then the result would be as follows:—

Thirty years purchase of L.2,000 yearly free rent of a third part of the estate,		L.60,000
Suppose of the L.15,000 charge for improvements there still remained due,	L.12,000	
The redemption money of the annuity is,	25,000	
The remaining debts amount to,	5000	
		42,000
Surplus of price,		L.18,000

So after these operations, A's income would stand thus,

Free rent of remaining two-thirds of the estate,	L.4000
Deduct Widow's Jointure,	600
Remains,	L.3400
Add interest of L.18,000, the surplus of price of the one-third supposed to be sold,	L.900
Sum,	L.4300

Thus A would have of clear income L.4300 a-year, whereas, supposing the law to remain as it is, a person in his situation could have no more than an income of L.350 a-year, or rather no income at all, as the L.350 a-year would be subject to the charge of factor's fee, &c.

This case is no doubt one merely hypothetical. But there can be no doubt that there are many cases really existing, which come very near to it. Nothing can show more clearly the extent of relief which heirs of entail, under embarrassments, would obtain from the working of such a plan as the one proposed.

As to this statement, it may be remarked, that,

on the footing of the act 10th Geo. III. it would not be incumbent on A to deal so with the L.12,000, the remaining sum supposed due for improvements, as to pay it off all at once; but, for the sake of simplicity, it is assumed in the foregoing calculation that he does so.

There are those who may be inclined to object that the operation of the plan would be to bring too much land at once into the market. Some objection of this nature was, in 1764, stated by Sir John Dalrymple. It would be a waste of time to set about proving, that gradually to set free the commerce in land would be advantageous to the country at large. But there is very little cause for apprehension that the market would be glutted, although the plan should be adopted to-morrow. Although heirs of entail should be enabled to make a proportion of their estates fee-simple, it does not by any means follow that all of them would proceed to sell. Those not labouring under embarrassments would not probably sell at all; and many of those in a different situation would prefer keeping the land, and, for the purpose of relieving themselves, borrowing on the security of it; as, instead of paying at the rate of ten, twelve, fifteen, and even twenty per cent., they would then, like other fee-simple proprietors, be enabled to obtain loans at five per cent., or at the ordinary market rate of interest, if it should be under five per cent.

20th December, 1827.

AN

APPEAL TO ENGLAND

AGAINST THE NEW

INDIAN STAMP ACT;

WITH SOME

OBSERVATIONS ON THE CONDITION

OF

BRITISH SUBJECTS IN CALCUTTA,

UNDER

THE GOVERNMENT

OF

THE EAST INDIA COMPANY.

" SUBJECTOS HABENT TANQUAM SUOS, VILES UT ALIENOS."

LONDON:

JAMES RIDGWAY, PICCADILLY.

MDCCCXXVIII.

LONDON:
PRINTED BY T. BRETTELL, RUPERT STREET, HAYMARKET.

" I cannot but take the liberty to say, that the circumstances and proceedings in these new extraordinary cases and impositions were very impolitic, and even destructive to the services intended. When men saw in a Court of Law (that law that gave them title to, and possession of, all that they had), reason of State urged as elements of law; Judges as sharp-sighted as Secretaries of State, and in the mysteries of State; and no reason given for the payment of the thirty shillings in question*, but what included the estates of all the standers-by; they had no reason to hope that doctrine, or the promoters of it, would be contained within any bounds: and here the damage and mischief cannot be expressed, that the Crown and State sustained by the deserved reproach that attended the Judges, by being made use of in this and like acts of power."—*Lord Clarendon's History of the Rebellion.* Vol. I. p. 122. 8vo. *Oxford Edition*, 1819.

* Prosecution of Mr. Hampden, for Ship Money.

PREFACE.

THE following observations on the STAMP ACT, which the East India Company's Government has lately enacted in Calcutta, are drawn from the correspondence of several Gentlemen long resident in that city, and who have had ample opportunity of observing the feelings and condition of its various classes of inhabitants. It appeared to the person to whom this correspondence was addressed, that, now, when the Appeal of the taxed inhabitants is coming before Parliament, the information which it contains will be useful to the public, and ought not to be confined to the few who might see the original letters. The EDITOR was accordingly requested to prepare them for the Press. For this purpose, the repetitions incidental to letter writing, as well as such private matter as was not immediately connected with the principal subject, have been omitted. Numerous

notes and illustrations have also been added, which the Editor's former residence in India enabled him to supply; and which became requisite, to explain to the general reader what is familiar only to persons well acquainted with the state of that country.

It may be necessary, for the information of such as are unacquainted with recent events in India, to give some short account of the circumstances under which this *Stamp Act* (an ominous name for a colonial tax) has been imposed. After the gallantry of the British army, and the expenditure of above *ten millions* sterling, had enabled the Indian Government to dictate a peace to the court of Ava, the "authorities" in Calcutta had leisure to count up what they had *paid for their whistle*, and to think of ways and means to reduce the load of debt which they had incurred. One mode was, to remain quiet, to promote improvements, to encourage industry and commercial enterprise, to husband their revenue, and pay off the new debt by degrees. This plan, however, was deficient in effect, and might trench upon some cherished objects of patronage.

From the nature of the Indian revenue, as is explained at length in the following sheets, the existing

taxes could not be increased; but it appeared to *some* of the advisers of the Government that a new tax might be imposed, which would extract some revenue from the inhabitants of Calcutta, who (as *they* pretended) contributed little or nothing to the wants of the State. The reader of the following pages will judge of the fairness or the intellect of the statesmen who could deliberately make this assertion. It is certain that the inhabitants of Calcutta pay a house tax, town duties, and inland customs, besides the harbour duties and customs upon the whole foreign trade of Bengal; this surely is something. And when it is considered that the Englishmen who inhabit Calcutta are not permitted by the Company's regulations to possess an acre of land over the whole of the provinces under their exclusive government—that they cannot go eleven miles from the capital, for pleasure or business, without a passport—that their licences may be withdrawn, and their persons deported to England, because they have "incurred the displeasure of the Government," without any further cause being assigned—it may be doubted whether it is quite fair to call upon *them* to pay for the glory or distant territory which the Company may acquire by their wars.

It appeared, however, to the Indian Government, quite fair and reasonable; and having discovered, what seems to have been unsuspected for thirteen years before, that the 98th and 99th sections of the Act of 1813 *, renewing the charter, conveyed the power of imposing all manner of taxes in Calcutta, with no other checks than the previous sanction of the Court of Directors and the Board of Controul, they obtained this sanction for a Stamp Tax, which was promulgated in December, 1826, to take effect from the 1st of May, 1827. This publication of the law was the first notice the inhabitants received of any such intention. Alarmed, as they might well be, at this novel assumption of power by their rulers, they began to examine the grounds on which it was founded. It appeared to them, that the sections in question only related to duties of customs, and taxes of a like nature; and that, if the words seemed to have a wider scope in that section, it was plain, from the whole tenor of the enactment, that this was all that Parliament intended. They met, and petitioned the Government to forbear from levying the tax, at least until a reference could be

* 53rd Geo. III. c. 155, sections 98 and 99.

made to England: this was refused, and they were plainly told that the clauses in 53rd Geo. III. c. 155, were considered by the Government as conferring upon them as full and ample a right to levy taxes in Calcutta as they already had in the provinces. Upon this, the inhabitants determined to make a stand, to have a public meeting to discuss the matters, and to petition Parliament against this encroachment upon their rights and their property.

They were not prevented from taking this course by hints that some peculiarly-vexatious clauses in the tax might be modified, if they would only submit quietly to the rest. If the arbitrary power claimed by the Government were submitted to, those clauses might at any time be re-enacted, and the Stamp Duty might be followed by a Property Tax, or any other oppressive impost. It was not to save the thirty shillings, at which he was rated, that Hampden resisted the payment of Ship Money. A meeting was accordingly held, in spite of all intimidation, and various attempts to prevent it; Petitions to both Houses of Parliament were agreed upon, and a subscription was opened to defray the expenses of a legal resistance to the tax, in India and in England. Upwards of 3,000*l.* were subscribed in an hour for

this purpose, and the petitions have been signed by nearly all the respectable European and native inhabitants of Calcutta who are not in the Company's service.

The members of the civil and military service are quite sensible how much *they* will suffer from this tax; and as they cannot (like the merchant) add its amount to the goods that are sold, and so throw it upon the consumer, they feel that it will operate as an indirect (and a considerable) tax upon their incomes. But as they know it to be an avowed opinion of the Indian Government, that "* it is not possible to conceive a more gross and open insult to Government than the public defence of a paper known to have excited its displeasure;" they felt that to sign any such papers or parchments would be deemed little short of rebellion. Their names are, therefore, necessarily wanting; although the hearts of the great body are with the petitioners against the tax: were it otherwise, however, it should not be forgotten, that the "gentlemen in the service" form neither the largest nor the wealthiest part of the inhabitants of Calcutta.

Mr. Adam, in his Manifesto, published only four

* See Governor ADAM's Manifesto, in 1823.

years ago, declared that "there was no PUBLIC in India;" and the established practice was only to evoke that phantom, when it was required to vote addresses to the Ruler of the day. Subsequently, certain *influential* secretaries of the Government thought that it might be called up to be taxed; and they have now raised a spirit that they cannot lay. This shadow of a public has started into life—it moves and thinks for itself—it is become a remonstrating and petitioning body, conscious of its rights, calmly bent upon attaining them, and looking steadily forward to the fast approaching time, when the Company's *Lease* of the Government, and their exclusive powers, will expire. When this PUBLIC first approached the Government with their Petitions, in the month of April, they might have been conciliated by the postponement of these ill-timed claims, but the replies of Mr. Secretary Prinsep contained "strong assertions without proof, and declamation without argument," while the "violent censures, without dignity or moderation," in Mr. Secretary Lushington's Letter to the Sheriff, and the tone of his communications to the unhappy proprietors of the Calcutta Chronicle (which was suppressed for opposing the new law), "give us as humble an opinion of his capacity as of his temper and

moderation." The result has been the same, on a smaller scale, as was produced by similar conduct in the time of JUNIUS *; the irritation of the public has been kept up, until it has become a deep and settled resentment against their merchant Sovereigns.

The statements in the following pages will show that the citizens of Calcutta have long had abundant cause to entertain such sentiments. The increased number of English inhabitants—the growing intelligence of the native gentry—and the increasing numbers and better education of the Anglo-Indians, have occasioned those causes to be more keenly felt. Public opinion was beginning to show itself, and the rash arrogance of those who have advised the late measures of the Indian Government has greatly hastened its development. In order to give weight to their claims, the Petitioners have deputed Mr. Crawfurd (the author of the History of the Indian Archipelago, and late Envoy to Siam and to the Court of Ava), to carry their Petitions to England—to support them by his character and exertions—and to explain any doubts or difficulties which may arise.

* See the First Letter of JUNIUS.

Should any one wish to see how far the rule of these Sovereigns has been conducive to the improvement of India at large, let him consult the third and fourth chapters of an "Essay on the Expediency of Governing India on the Principles of Colonial Policy." It is an octavo volume, published by Richardson, in 1822, and contains, in three hundred and eighty pages, more original thinking and sound information than is to be found in any other publication on the present state of India.

The eyes of the Calcutta public are now fixed upon Parliament; and to that illustrious body the inhabitants look for a remedy to these evils. Parliament has, on various former occasions, interfered for the protection and relief of his Majesty's subjects in India, both European and Native; and all the checks that have yet been imposed upon the unlimited fiscal exactions of the Local Government have originated in their protecting care of the rights of the subject. The natives also, as they become more generally acquainted with our Government and history, have learnt that there is a power in Parliament superior to that of the *great lessee* placed over them for a time, and begin to worship with their faces towards Westminster. In this case the power claimed by

the Local Government depends at best upon one slovenly and careless expression* in a long and intricate enactment. The construction that is given to that dubious clause is one which infers that the House of Commons had delivered over to the Company, "*checked*" (as the phrase is) only by a Minister of the Crown, the unlimited power of taxing a remote dependency. Surely the inhabitants of Calcutta do not expect too much from the Commons of England, when they appeal to them to protect their property from such an unconstitutional system of exaction, and, at the same time, to vindicate their own privileges.

* "Customs, *and other taxes.*"

AN

APPEAL TO ENGLAND,

&c. &c. &c.

THE community of Calcutta has very recently been thrown into a great ferment by an edict of the Local Government for raising a revenue by means of *Stamps*. It is an act of ominous title and recollections to English ears. It is peculiarly ill suited to the habits and the multifarious small transactions of the two or three hundred thousand natives who compose the bulk of our city population. It bears peculiarly hard on the infant commerce of an infant and dependent state. It is especially ill timed, as coming into operation in the second year of profound peace, following a most expensive and ruinous war, which has not only dissipated millions in expenditure, but absorbed, by loans, which are still kept open, yast sums of individual saving and capital, that heretofore used to seek the channels of commerce and reproductive industry. It is impolitic, as adding to the burdens and to the difficulties of trade and manufactures, at a moment when they are in a languishing condition among us, consequent upon the effects of the late war, and the reaction of those tremendous shocks which commerce and confidence have recently sustained in Europe and America. It is unwise in respect to the *Company*, as showing in glaring colours,

towards the expiration of their charter, the *non-identity* of interests between governors and governed, where the former are not only great monopolists and traffickers, but owners of the universal rent of land, avowedly holding their lease of the country on the principle of a private estate or plantation*, from which they are to extract all the profit they can, without rendering account to the governed, and without reference to the *necessary* charges of governing and maintaining. It is foolish, as leading to the renewal of ancient questions and feuds with the King's Supreme Court here, which was planted among us in 1774, expressly as a counterbalance and protection against illegal acts and doubtful exactions of the Company's governments. It is imprudent, as giving rise to the mooting of many grave and curious points, touching actual and future relations between the delegated local authority of the Company's temporary and trading government, and the subjects of the king in India—in India now *formally* recognised as a royal possession by the last charter of 1813. It is inconsiderate, because the natives hold this new and *unaccustomed* species of taxation in especial abhorrence, and have before *twice* successfully resisted or evaded it, when attempted to be applied to the "Moffussil" (or provinces out of the jurisdiction and protection of the king's courts), where the Company exercise absolute authority.

But these considerations, though all of them most important, are not what we chiefly desire should attract the attention of our fellow-subjects in England at this moment.

In this stage of our pleading, we pass by the political and economical defects of law stamps, and taxes on justice in any shape; the heavy bearing of

* Vide "Secretary Prinsep's History of Lord Hastings' Administration," Second Edition; London, 1825. Chapter on Finance, Vol. II. p. 422.—Appendix, No. XVII. of this work.

taxes on transfers of property in relation to the *nett* revenue they produce, and to the charges of levying; and the vexations and impediments they throw in the way of business, and of the growth and accumulation of capital.

Our primary object is a higher one;—we would fain interest our countrymen, if we can, in the struggle we are endeavouring to make against our Indian "Stamp Act," as being ILLEGAL and UNCONSTITUTIONAL. It is here we desire to make our stand—to resist by all *lawful* means in our power this first instance of a local impost, levied, as we aver, by incompetent authority; on grounds that are to justify hereafter the imposition of direct and indirect taxes of every kind and degree, without our concurrence, *or even our previous knowledge* of the meditated imposts, and with no other limitation than the declared will and pleasure of the authorities set over us. In the nomination of those authorities we have no voice;—of their proceedings we are allowed to know nothing;—their wants we have no means of appreciating;—they are men with whom, from *the absence of Institutions of any description*, we have no organ of communication, far less a due influence proportioned to property; and, to sum up all, they have the most absolute power over our persons and fortunes, and can put down all opposition offered to their will in the shape of petitions,—writings,—printing,—speaking, or actions in court, by the summary deportation of any obnoxious European at a moment's notice, and without cause assigned.

We desire it to be understood, distinctly, that we do not now go to the lengths that other dependencies of England have gone in days not so long passed by that they should be so soon forgotten—there is not one of us, who is not as yet willing to submit to taxation by *express* authority of Parliament. Waving all nicer questions, we still defer to that body as our *virtual* representatives; and so long as each particular

impost is justly and fairly discussed in Parliament, *after reasonable previous notice to those whose interests will be affected by such measures,* of its intended provisions, so that they may have opportunity to petition against it, and instruct their friends in either House accordingly, we are content to submit to reasonable taxation. We shall even then labour under great disadvantages in making any effectual opposition to intended imposts, owing to our distance from the spot where they are to be debated, to the want of representatives or regular *agents*, and to the chances of new clauses, not previously made known to us, being inserted by Parliament in Indian Money Bills; but all this is infinitely preferable to our *present* condition, in which a tax is secretly proposed by the Local Government — secretly discussed — secretly sent home for approval—secretly recommended by the Court of Directors to the President* of the Board of Controul,—then secretly sanctioned,—secretly sent back to India, and, in fine, secretly passed through the forms of our Council Board, till at length it is promulgated some fine morning as an irrevocable edict in the Gazette of the Government, when all efforts to have it abrogated are as vain as they are invidious, and full of hazard to individuals.

The composition of our supreme councils in India is such, that none can have much confidence in their intentions or acts, except the East India Company at home, and their servants abroad. They consist of four members only, one of whom is a general officer taken from the royal army, and ill qualified, by education or habits, for taking part in the civil or financial affairs of India. His office is, to direct and regulate the military forces, and in practice he does little else :

* It has been admitted that there is, in practice, no *really deliberative* Board ; and, if there were, little freedom of opinion could have place in a body, the members of which hold their seats during the pleasure of *a* minister.

he has more than enough on his hands in his own department, and the brief and temporary nature of his connexion with the country is further adverse to his taking any interest in its domestic concerns. Of the remaining three members, the governor (or governor-general) is usually a stranger—a nobleman from England, and it is much to be regretted that the pernicious practice of filling such important posts by *Company's* servants* is in vogue again, notwithstanding the *dissuasions* of Lord Wellesley, and of so many other competent judges, and notwithstanding the memorable lesson of Sir. George Barlow's mischievous administration. The governor is president of council, with a casting vote, and head of the executive; but all proceedings pass by majority of voices, except in certain extreme cases, when he may act under solemn protest on his single responsibility. Practically, however, he chiefly directs the political department, and correspondence with native powers. Almost all ordinary legislation in matters of finance, justice, Company's trade and monopolies, is in the hands of the two remaining members of council, who are named by the Company from their senior civil servants, and who, almost necessarily, engross the practical administration, being, though a minority of the whole council, a compact and allied corps, acting together under a common interest, as representatives of those who appoint them. They are backed by the entire body of ministerial secretaries and high public functionaries about council, who look to seats there in turn, and will naturally support their masters' interests whenever these are in opposition to the interests of the *governed*; more particularly when any clashing takes place between the sinister interests of the Company's Government and the wants or wishes of the independent European or Anglo-Indian portion of the community.

* Munro, Elphinstone, Fullarton, Malcolm, and Lushington.

We scruple not to affirm, that the two great classes of interests in question—those of the Company, and those of the people placed under their rule—not only seldom coincide, but in most cases are diametrically opposed to each other. This is an almost unavoidable and inherent effect of the system under which India is administered; but this contrariety of interests, so long ago pronounced unavoidable by Adam Smith, is not *solely* caused, as he supposed, by the incompatibility of the two functions of sovereign and trader united in the Company's government, although that anomaly, beyond doubt, greatly adds to the amount of evil in the system. The chief source of discordance in interests between governors and governed here, lies deeper than in mere commercial rivalry. It springs from the close system of ruling India through a distinct corporation (whether mercantile or non-mercantile), holding the country on renewable leases, as a plantation or estate, of which it sweeps off the entire or almost entire land rental, and so nips in the bud a main source of accumulation. Such a corporation directly adds to its gross revenues, as well as its power and patronage, by each acquisition of *adjacent* estates: it is not accountable to the subject for expenditure or receipts, and its liability in this respect to the mother-country is little better than nominal.

If any nett revenue or surplus arises, such a government is not bound to remit taxes in proportion; on the contrary, the narrow and ignorant policy of England has been that such should be remitted thither as tribute, and appropriated to the conquerors. In short, a conquest India is, and as a conquest she has been treated. This pernicious tendency and spirit of the Government is not allowed to receive its natural compensatory mitigation by transfusion of the arts, the example, the skill, the intelligence, the capital, and industry of the superior country and race into the inferior. All settling, all colonising, all resort to the country, all security of remaining when there, all *interloping*, is

rigorously prohibited, except to a favoured handful of Europeans, who are unlawfully bound, by indentures, to yield up, as the Company allege, every privilege and birthright, under the terrible alternative of banishment from property, family, and connexions, in the event of giving umbrage to the Company, or its servants abroad!

Thus the local council of government, from the nature of the close anti-colonial and proprietary system, feebly checked at best by the controuling board of Indian ministers, is naturally and essentially opposed to the interests of the conquered; and it is more particularly opposed to the interests of the inhabitants of the metropolitan cities of British India, because these are possessed of more intelligence, spirit, and wealth, than the mass of the provincial population—because they are *in some degree* protected by the king's courts, and because these cities are the great centres of intercourse, trade, and connexions with the mother country. What checks, what guarantees, what influences exist, on the part of any class of the inhabitants, to countervail such a system, or to work on the individuals who compose its little oligarchy of a council? Literally none. We have not even the benefit of a king's chief judge or chancellor sitting in that body, as in most *royal* dependencies where there is no colonial assembly. The commanders-in-chief are civil cyphers—the governors diplomatists, who look to the Company for the usual close of their services, a pension—the two other members are the Company's own dependents, not merely from habits of long life and gratitude for selection, but from present hopes of prolonged enjoyment of lucrative office, if they give satisfaction, and future hopes of succession to directorships at home on the strength of solicitude abroad for "*the Company's interest.*"

If we had the nomination, by election among citizens of *large* property, or by any other means, of even a single member in council, to represent and

watch over our interests—nay, if there were even a single non-military member in council whom we could consider independent of the Company, and of that powerful "aristocracy of place," the civil service, we might be satisfied, for some years to come, at least, to leave the power of taxation, and our fates and fortunes, in the hands of such a council. But, constituted as that is, and while India remains excluded from almost any share of parliamentary or ministerial attention, and leased out to a corporation (a mercantile one especially), we must loudly claim not to be delivered over, bound hand and foot, to the tender mercies of such a body, harsh, haughty, arbitrary, partial, and above all *secret* in its proceedings towards the subject, with whom it has, and can have, no sympathies—nothing in common.

It is our firm belief that Parliament never contemplated that we should be so delivered over, or that the power of *unlimited* taxation should be conferred on the Local Governments jointly with their masters, the Directors and the Board of Controul. We find no enactment to that effect in any of the statutes. We collect no such intention from any thing let fall by members of either House in debate; nor is it, indeed, likely that an English Parliament would ever delegate such wide-sweeping power to *any* inferior authority whatever. But if its habitual and salutary jealousy of its own exclusive "power of the purse" had ever given way, so extraordinary a grant would have been fully, explicitly, and even apologetically conferred, instead of being left to be gathered and inferred by implication. Yet, on no better foundation rests the power, now first assumed, of taxing without limitation of any kind, by authority of this Government (under private sanction of the Court of Directors and the Board of Controul), within the city of Calcutta.

Every one familiar with Indian history is aware that this vast and flourishing metropolis is above a

century old*, and that it is *entirely* of British origin, built on a speck of ground granted for a consideration to our earliest settlers, under the distracted government of the tottering Mogul Empire†, for the purpose of building the British factory, and dwellings for the Company's servants and followers, and liable to instant resumption, by a change of mind on the part of the arbitrary granter. It is no *conquest*, but existed half a century before the present East India Company effected its territorial conquests in Bengal (1757), and still longer before the Emperor of Hindostan legalised those conquests (so to speak) by conferring the Dewaunee, or civil government, on the Company‡.

As early as 1726, by letters patent, dated 13 Geo. I., confirmed by 25 Geo. II. (1753), this settlement obtained a legal and constitutional recognition, with a charter of justice§. It was placed under English laws, and its courts were made courts of record; but the mayor, aldermen, and the criminal justices were appointed by the Company, and removable at will. The conquests of Clive (1757) added considerable territory to the original British settlements; and further additions of vast extent were the fruits of the war of 1764, with Cossim Ally, Sujah Dowlah, and the Mogul Emperor. But these accessions, whether held by conquest or forcible cession, were administered at the will of the Company, which succeeded to the possession of the whole land rents, and of such revenues of customs, transits, excises, &c., as were levied by the antecedent

* About 130 years, 1696. The *united* East India Company itself only came into being in 1708.

† Azeem Ooshan, grandson of the great Aurungzeeb.

‡ Granted by Shah Allum 1675; assumed by the Company 1770.

§ The settlements of Madras and Bombay obtained similar Corporate Charters, but English Law generally was established in *all* the Company's settlements in 1661 by Car. II.—Mill, vol. I. p. 113, note.

government of the Moguls. The subsequent acquisition of the Dewaunee from the captive Mogul himself, gave that to the Company *de jure*, which they already possessed *de facto*. But the Parliament and law of England, speaking technically, knew nothing of any part of Bengal but the original settlements of Calcutta; even criminal jurisdiction was not legally exercisable over Englishmen beyond the bounds of the old settlement. The disorders and oppressions of the Company's governments, and the dissatisfaction and complaints brought under the notice of Parliament in consequence, joined to the pressing wants of the Company at home, and the desire of ministers to share the spoil and engross the patronage, gave rise, about sixty years ago, to the various projects for non-renewal of the Indian lease; and ministers who, IN THOSE DAYS, had no joint responsibility with the Company for mismanagement, and no interest (but the contrary) in screening their misrule, concurred in the appointment of parliamentary committees to inquire, and propose remedies. The first of those committees (Burgoyne's, 1771–2), after the temporary Act of 1769, finally gave rise to the Act of 13 Geo. III., 1773, which, avowedly to protect Europeans and natives in India from the Company and its government, set up a "*Supreme Court of Judicature*," in lieu of the antecedent mayors, aldermen, and justices. The judges were named by the Crown, and made wholly independent of the Company; and the jurisdiction of the Court (uniting the powers of the King's Bench, Chancery, Admiralty, and Ecclesiastical Courts) was extended over all the Company's territories, with some discretionary reservations as to certain existing laws and customs among the natives.

The indiscretion, absurd pedantry, and ambition of the first bench of judges (Impey and his brethren), having led to extravagance and oppressions under colour of law, after a few years' trial, the jurisdiction

of the new Court was considerably curtailed (21 Geo. III., 1781), but its authority was preserved *complete, entire,* and *exclusive* within the town of Calcutta, where English laws and privileges, *not expressly taken away by statute,* were still to prevail, saving only certain civil laws and customs among the Hindoos and Mahomedans, relating to property, inheritance, marriage, &c. The jurisdiction of the Court over British subjects, and *all* persons in the service of the Company, beyond the boundary, continued *intact;* but to prevent interminable litigation on the *vital* matter of the land revenue (rent), from which, in those days, the Company derived almost its sole resources, the Court was inhibited from meddling in land-revenue suits, which were thus left, together with the criminal and civil jurisdiction over natives *beyond* the boundary, to the *Company's* courts of law.

It is here material to notice, that this inhibition in regard to the King's Court touching matters of "revenue," is said by the lawyers to mean only *lawful* revenue—that is, such revenues as, being at the time of the restrictive Act in existence in the Moffussil provinces, can alone be supposed to have been recognised by Parliament. These were mainly the land revenues, the salt and opium monopolies, and a few trifling excises, together with some transit and inland customs. But it is maintained, that although all revenues *ejusdem generis* with those then in existence, or with those in use with our Mogul predecessors, come under the restriction, yet that the Court is not barred from entertaining questions concerning *other* or *new* kinds of revenue (such as Stamp Taxes), raised in the provinces beyond Calcutta, and not legalised by recognition in any subsequent Act of Parliament. As the *general* authority of the Court to entertain all questions against Company's servants, *wheresoever acting*, is not taken away, save in the excepted cases as above, it follows,

in the construction of strict law, that Stamp Duties and other *new* taxes, imposed *on the* provinces, unless sanctioned by Parliament, may be questioned in the supreme courts of Calcutta, and are in fact *illegal*. But it is admitted on all hands, that *within* the Court's boundary, no taxes or duties, not so sanctioned expressly, can be levied by any local authority.

An essential and fundamental distinction exists therefore, *and always has existed*, between Calcutta and the provinces. In the former, which is not a conquest, but an ancient "settlement" of Englishmen under the national flag, the inhabitants from the date of its original foundation (1696, posterior to the enactments of Car. II., 1661), but at any rate from the date of 13 Geo. I. (confirmed by 25 Geo. II., and 13 & 21 Geo. III.), have never been subjected to any but English laws; and agreeably to constitutional and colonial common law, they inherit *every right and privilege of their own* country, which (being practicable) is *not expressly taken from them* by the legislature. On the other hand, the inhabitants of the "Moffussil," or provinces, a conquered people, only since 1757, can claim no rights or privileges of Englishmen, *but such as have been expressly conferred on them* by the prerogative of the crown or by the legislature. These rights have been defined above.

The Anglo-Asiatics and Indian classes, foreigners and others, resorting to and *inhabiting Calcutta*, participate in all the rights and privileges, and share all the liabilities (and no more) of Englishmen, under the successive statutes above mentioned, but only in virtue of their domicile; as it would have been difficult, or impossible, to have different codes in force in the same place, and injurious to the common intercourse and traffic of a commercial settlement, which Calcutta has always been. The original charter of justice of Geo. I. referred of course, and was devised for a *British* settlement, and for the sake of British settlers. All the subsequent acts and charters have but

followed that original. Several generations of natives have thus lived and died in Calcutta, possessed of all the rights of Englishmen, and subject to English laws only, since the period of the first charter (13 Geo. I.), nay, even since the epoch of the Supreme Court (1774), 13 Geo. III.; and the entire Anglo-Indian (or half-caste) population has grown into existence within the same period.

So carefully has this fundamental distinction been preserved by Parliament, between the *ancient* British settlement of Calcutta and the *subsequent* territorial acquisitions by the Company (*these* the fruits of conquest and intimidation, *that* obtained by pure bounty from the indisputable sovereign of Hindostan, for purely commercial purposes, and when we had not a soldier in the country), that the legislative as well as the judicial powers have been kept separate, and the executive alone left in the single hands of the Company's Governments. In the provinces, the Government passes what laws and regulations it pleases, subject only to the private approbation of its masters (the Directors of the Company), and their controulers, the Ministers; and saving, of course, the rights and jurisdiction of the King's Supreme Court in Calcutta (Madras, Bombay, or Penang), with which none of these authorities can interfere. But within Calcutta, by the 13th Geo. III., cap. 65 (1773), a limited power of making "rules, ordinances, and regulations for good order and civil government," *but nothing more*, is entrusted jointly to the Government of India and to the King's Court. No regulation can have any effect within the old settlements till publicly "*consented*" to and "*approved*" by that court, which is further distinctly prohibited from approving any thing "repugnant to the laws of the realm." As a further and most important safeguard to this declared privilege of the inhabitants, all proposed regulations must be placarded, in the public court

room, twenty days before the Court is permitted to register them as approved. Moreover, registration may be opposed by council for parties conceiving themselves aggrieved; and an appeal from the Court's approval to the king in council *(acting judicially)* is open to every subject in India or in England*.

It is worthy of notice that this privilege, almost the only safeguard for property and person which the inhabitants of Calcutta enjoy, was conferred by the same Act, and at the same time (1773) when the conquered provinces were in a great degree brought under the *judicial* authority of the king's courts, till then restricted to Calcutta jurisdiction. But while the boon of an improved *judicial* system was thus granted to the conquered provinces, they were still left to the Company's *legislative* authority; while the *old* settlement was taken out of the Company's hands altogether, *legislatively* as well as *judicially*, leaving to them only the *executive power*. A stronger proof could not be given of the distinction made by Parliament between them.

That this legislative circumscription on the vast general powers of the Company's Governments has been most effectual, and not an useless name, is matter of notoriety. It is a practical *veto* in the hands of the Court, in quality of protector of the king's subjects, and guardian of the laws of England against the caprice, sinister interests, and love of power natural to all in authority; *more* natural to men who wield despotic power every where beyond this little charmed circle; *most* natural to delegated, proprietary, leasehold, and trading governments. It is this LITTLE "*magna charta*," the single rock and refuge of Englishmen in India, in the midst of the overwhelming ocean of sordid and arbitrary power, and under the desertion and neglect of Parliament, which

* See case of the Calcutta Press Law of 1823, in which the appellant, J. S. BUCKINGHAM, was not in India when the Law was registered, but resided in England.

has raised this metropolis to its present vast and splendid position—which has made it the domicile of multitudes of *native* capitalists, and of many great landholders whose estates are situated in the Moffussil—and which has created, within the memory of man, out of nothing, a prodigious and flourishing Commercial port*. We ask, what of all this would have been in existence, had Calcutta been exposed, unprotected, to the fiscal rapacity of a leaseholding Company? The answer may be taken from what we see passing before our eyes, and around us, in the less fortunate provinces of our Indian empire, in which the Company's thirst for revenue is not restrained by any privileges of the subject, or Parliamentary clog in their powers of indirect taxation, nor fettered by limitations to the indefinite absorption of the land rents, under a fixed composition or permanent settlement†.

It is to this thirst for more money—to this impatience under legal restraints, and under the self-denying ordinance of Lord Cornwallis, that we owe the present bold attempt to fix us with new and indefinite revenue exactions. Hence, the heart-burnings at the exemptions of Calcutta; hence, the lamentations over the districts that were allowed to redeem their indefinite land burdens for a fixed heavy‡ quit-rent, and which therefore yield nothing additional by periodical renewals of leases and turns of the fiscal screw, such as the Company continue to exercise on their acquisitions of later date than the permanent

* Twenty or twenty-five French ships alone resort hither annually, chiefly for Indigo; an article produced, to the extent of 10 or 12 millions of lbs. (worth in Europe about £.4,000,000), *entirely* by private European intelligence and industry, *within forty years*. The annual capital laid out on it by the Calcutta merchants and capitalists is nearly £.2,000,000 sterling.

† Vide Note A.

‡ Lord Cornwallis took, as the basis of his permanent settlement and perpetual composition for land rent in Bengal, Bahar and Orissa, the government share of the gross produce as he found it in 1790. Whether that was sufficiently heavy, the

settlement, in the face of their own solemn and twice-repeated public pledges. Not content with endeavouring, by all ways, to narrow the amount of the protected portions, and prevent extension of the system, they prematurely seek to devise new and indirect taxes in the shape of excises, transits, town duties, house, shop, police and stamp duties, and judicial taxations. For such exactions, even the protected districts cannot yet be ripe, until the prosperity and accumulated capitals of the new-made landholders begin to re-act on the country at large, by giving rise to considerable farmers in the place of wretched *métayers*, and by creating a demand and taste for conveniences and comforts.

The spirit of taxing, once roused, directs its pernicious activity to other places than the protected districts, and the incompatible objects are sought of subjecting the country *at large* to the thousand devices of indirect taxation; while, at the same time, the "oriental" revenue system is persevered in, of

following extracts from the most intelligent of all Indian statistical authors, H. T. Colebrook, in 1795, will fully show:—

"In the rule for dividing the crop, whether under special engagements or by custom, three proportions are known:—

Half for the landlord,	Half for the tenant,
One-third ditto,	Two-thirds ditto,
Two-fifths ditto.	Three-fifths ditto.

These rates, and others less common, are all subject to taxes and deductions similar to those of other tenures; and, in consequence, another proportion, engrafted on equal partition, has in some places been fixed by Government in lieu of all taxes; such, for example, as nine-sixteenths for the landlord, and seven-sixteenths for the husbandman."—*Husbandry of Bengal, P.* 54.

"The landlords are responsible to Government for a tax, originally calculated at ten-elevenths of the respective rents of their estates."—*P.* 93.

"The institutes of Akber inform us, that former monarchs of Hindostan exacted one-sixth of the produce of lands. Under Akber, the revenue was settled at one-third of the produce of lands cultivated for every harvest, or opened after allowing a short lay, in order that the soil might recover its strength; but for older fallows *much less* was required."—*P.* 62.

considering that country as a vast estate, of which the Government is landlord, and ought to draw the rents, without being accountable for any surplus, or expected to remit any burdens once imposed on the tenantry.

The same fatal system is naturally pushed into every fresh acquisition of territory. Taxation, according to the notions of the East, is, by a monstrous inversion of right principle, regarded *not* as a contribution from all, proportioned to property, for the unavoidable charges of protection and government, but as a *due*, a property, or right of the state to all it can extort (leaving a bare subsistence to the cultivator), and out of which no more is to be expended for the benefit of the subject than is unavoidable*. It is grievous to see such a notion as this sanctioned by repeated statutes, providing for the payment of a stipulated sum of this "surplus revenue" or "tribute" into the British Exchequer; or, as in the last charter, providing for the division and appropriation of the expected booty in certain *shares* (after paying charges and debts) to the Company and to the Crown; as if it did not bear sufficiently hard on India to have to pay for *three* governments—the local, the directorial, and the controuling—none of them subject to any check on expenditure by the unfortunate tax *payers*, and all of them zealously concurring in the exclusion of the native and Creole population from any share in honourable or lucrative public employment;—all concurring in eagerly preventing India from benefiting by the resort of European capital and skill—in discouraging colonization or permanent residence, even of the Company's own servants—and in stimulating Europeans of every class to return to England, with their accumulations of capital; so that the internal administration of the country is constantly shifting into fresh hands, and the exclusion

* Prinsep's India, Vol. II., pp. 422, 424.—Appendix, No. XVII.

of all sympathies between governors and governed consequently rendered complete.

But the land revenue is not the only financial monster of India: there are two great monopolies not inherited by us from our Mogul predecessors, but created by English ingenuity*, both of which fall with great severity on a dense population *of paupers*. One of these is particularly grinding, as affecting an article (salt) of primary necessity every where, but no where more so than in India, because the indigent natives exist on the poorest of diet—a handful of rice or a cake of toasted flour, which are neither palatable nor digestible without the miserable condiment of a pinch of salt. We pass by the details of this odious monopoly; its cruelties, forced labour, smuggling, demoralization, and invasion of individual rights—the unavoidable accompaniments of a system that interdicts all making and dealing in salt, except by and for the Company, in regions that produce nothing else, and where salt low-lands, vast jungles, and a powerful sun, combine to produce that article in indefinite quantity. Let it be sufficient to state the bare fact that the salt, of which the cost of production is about half a rupee, is bought (at the Company's sales), by the wholesale merchants, for four or five rupees; and ultimately retailed to the unhappy consumer on the spot at six, well adulterated† with impurities.

* The origin of these, as every reader of Indian history knows, was a scheme of CLIVE's, for adding to the public emoluments of the head Civil and Military Servants, at the expense of the poor consumers. The Honourable Directors indignantly disapproved of such barbarous and illicit exactions of their servants, and forthwith commanded that the profits should be given up—TO THEMSELVES! MILL, vol. III., p. 367.

† Such is the poverty of the people, that they prefer the impure brown salt, procured by filtrations through the overflowed mud of the salt marshes, and by a hasty evaporation to that obtained from the purer sea water and solar evaporation: not because they like the earthy admixture, but because the first is accompanied by

The opium monopoly is effected by an equally unjustifiable interference with manufacturing and agricultural industry; its culture is prohibited except at rates fixed by the Company, and for the Company's sole advantage. Its profits are several hundred per cent.

These monopolies, however, are now of some half a century's antiquity, sanctioned by prescriptive and, perhaps, by implied recognition in Acts of Parliament, like the land tax. But a striking proof of the watchful keenness for immediate gain, and for pushing the advantages of an *exhausting* system of revenue to the utmost, may be seen in the eagerness of the Company to extend this system, not only to each fresh conquest, but through the intimidation or bribing of "*protected*" Princes, into tracts not our own, where such monopolies had never before cursed the industry of the inhabitants. In our late acquisitions from the Burman Monarchy, the blessings of our salt monopoly and land tax are *already* in progress; our salt system is extending elsewhere in every available direction; and we have prevailed on the independent, dependent, and *semi-dependent* chiefs of the entire region of central India, for miserable gratuities, to grant us the monopoly of opium in their states, which have long been remarkable for this produce. By this arrangement, an exact parallel with the justly-ridiculed system of the Dutch, in respect to the spice trade, and the command of the whole sea coast, the Company has nearly succeeded in monopolising this valuable drug all over India.

Such being the condition of the whole of India, where the Company has undivided authority, or influence equally powerful with command;—such being the spirit which animates its financiers, the jealousy and covetousness may be readily conceived with

a proportion of bitter and pungent saline compounds; and thus they obtain a greater proportion of *seasoning* for their money, in the very small quantity of the article which they can afford themselves.

which they regard a little spot like the ancient settlement of Calcutta, preserved in some degree from fiscal gripe by British laws, and by a few British privileges, under the guardianship of a tribunal which has something of the nature of a *veto* on the acts of the Local Government.

The Company have long borne this restraint with impatience, and have endeavoured to weaken and destroy its conservative force in regard to property and person in various ways. At first, the Supreme Court was absurdly obstinate and pugnacious to a degree which gave the Government an advantage, and even a popularity, in that struggle which led to the partial curtailment of the jurisdiction in 1781. Before this, however, the sagacious Warren Hastings had found a quieter mode of neutralising opposition, by gratifying some of the judges* with lucrative judicial posts *under the Company.*

Lord Cornwallis and Lord Teignmouth were little disposed to continue the fight. Lord Wellesley and Chief Justice Anstruther, had been fellow-labourers in the days of antijacobin and antigallican phrenzy; owing allegiance to the same patrons, they quietly converted the designed system of irksome checks on the Government into a system of courtly connivance between the executive and judicial powers, which has subsisted *almost* to the present day. Lord Wellesley, a brilliant and able governor, was the most arbitrary of rulers, and the most intolerant of any thing like opposition. A characteristic mark of the spirit which he infused into the Court, is shown in the fact, that he first enacted, and Anstruther first submitted, to a system of "regulating" the press, which sheltered the public conduct of British judges from the comments and scrutiny of their fellow-citizens. This stigma,

* Impey, Chief Justice, was made Chief Judge of the Company's principal Court; and Chambers, Puisné Justice, was made Judge of a captured European foreign settlement near Calcutta.

(pudet dicere!) the judges have not removed from themselves to the present day*.

The authority on which the Government now assumes the broad right to tax within Calcutta, is the last charter (53 Geo. III., cap. 155), sections 98 and 99. On that authority, the Vice-president of Bengal, in council (the Governor-General being absent from the seat of government), has argued this question publicly, and the argument consists of six distinct propositions. These are contained† in the Financial Secretary's reply (of the 12th April, 1827) to the remonstrances of the inhabitants‡, and are in substance as follows:—

I. The power of taxation within Calcutta is granted to the Government (under approval of the Court of Directors and Board of Controul), without necessity of registration in the Supreme Court; without any limitation as to amount; and with no other limitation as to kind or description of impost, except that the tax be such as may be *legally* levied in the provinces beyond the Supreme Court's jurisdiction.—*Prinsep, par. 3 and 6.*

II. There is no constitutional reason why Calcutta should be exempted from the right of the Government to tax all other places. In the eye of the legislature, Calcutta and the provinces are equal in rights and liabilities.—*Par. 7.*

III. The powers conferred by the Act of 1813 have always been contemplated by the legislature, and known to the Government; although not exercised in Calcutta till now, they have been in operation at Bombay and elsewhere.—*Par.* 13 and 14.

IV. It is necessary that Government should now increase its revenues, because, notoriously, it has not enough for its wants.—*Par.* 11.

V. Stamp Taxes are in themselves good, and among

* Vide Note B.

† Appendix, No. III.

‡ *Idem*, No. II.

the least burdensome imposts; they fall on the rich, not on the poor.—*Par.* 15.

VI. It is just and reasonable that Calcutta, which now pays "little or nothing" to the public expenses, should bear its share, in return for the protection and security it receives.—*Par.* 7 *and* 15.

To these six propositions, the following is our argument in reply:—

PROP. I.—On the question of REGISTRATION and LEGALITY.—*Prinsep, par.* 3 *and* 6.

We might dispense with argument in the first branch of this proposition (the necessity, or otherwise, for registration), for this singular reason, that the point has been abandoned by Government, after a vain struggle of two months. The Stamp Act was secretly passed by the Council, on the 12th December, 1826, and first promulgated in the Gazette shortly after. It was to take effect on the 1st May, 1827. Every humble effort of the inhabitants to have it repealed, or even suspended, until they could be heard in appeal to England, was disregarded. Registration in court was contemptuously declined, as needless, and a lowering of the Government's lofty pretensions. The necessary swarm of tax gatherers, high and low, was organised; the stamps prepared in reams, and prosecutions threatened against all seditious recusants.

The 1st May arrived, and June rolled on; but, by universal consent of the population, *no one would use the stamps!*—all awaited, with firmness and respect, the consequences. Alas! after all the vapouring of all the functionaries, they were obliged to come into court, and sue for the despised registration—without which the stamps and stampers were of no avail. What is to be thought of the precipitation and legal ignorance which could thus commit a haughty Government into such a humiliating two months' struggle? The practical decision of this registration question does not, however, touch the main

object of the petitioners to Parliament, which is to deprive the Company's servants of the power of secret and unlimited taxation in Calcutta. We proceed, nevertheless, with our argument in favour of our *general* right to registration, that the ground of our claim to this conservative privilege may be distinctly set forth, and appreciated by our countrymen, when we shall have need to avail ourselves of that claim on future occasions.

1. However amply, then, the powers contended for may be borne out by the *letter* of the statute 53 Geo. III., we contend, that nothing but an explicit enactment can destroy our privilege of registration in the Supreme Court. That privilege, though conferred by an *anterior* statute, 13 Geo. III., which granted the first regular parliamentary constitution to India, and erected the King's Court, to protect the inhabitants in their ancient rights to *English* laws, is of a general and conservative nature—not to be taken away by implication and inference. By that *charter*, of 1773, no penalties or inflictions whatever can be legal in Calcutta, but under the authority of the Supreme Court, which alone has the power of enforcing such; and Government has not yet claimed to enforce the stamp, or any other penalties, except by informations or actions in that Court. The judges must, therefore, decide on the legality, in one shape or other, sooner or later. Let us suppose that, instead of pecuniary penalties, the non-professional framers of this Stamp Act had awarded imprisonment, whipping, pillory, hard labour, banishment, or any other extravagance. Let us suppose the pecuniary penalty to have been 1,000*l.*, or 10,000*l.* for each farthing offence; would the Court—could it—inflict or levy such? Could it hold itself bound by the assumption, that the questionable 98th and 99th sections of the statute, 53 Geo. III., had taken from it all discretion of interference?

No one doubts that Parliament *might*, specifically,

inflict *any* of the above absurd penalties; but could it, or would it delegate, by mere implication, such sweeping penal jurisdiction to the Company's servants over the King's subjects, and so annul the protective functions of the Supreme Court? It is impossible; and this, therefore, proves too much.

The first point (registration) being disposed of, the second point is raised for an argument before the Supreme Tribunal, and for subsequent appeal to England, namely—

2. Does this taxing power, instead of being confined to customs, and other taxes, "*ejusdem generis*," extend to taxation of every kind and degree?

To this we demur, because we will not believe that the British Parliament ever did, or would, delegate such tremendous power to any subordinate and remote authority, least of all, to a temporary and trading Government. If the legislature did so mean to surrender its functions, it would do this expressly, avowedly, explicitly; not leaving the matter to be gathered from inference or construction, or as a point susceptible of an argument at bar. There is nothing in the political history of the Act of 1813, in the debates in Parliament, or discussions in the Court of India Proprietors;—nothing in any known declarations of individual Directors or Ministers, to show that the remotest idea of such a terrific general power ever entered into the contemplation of any one. Until 1825, when this Stamp Act was *secretly* cooked up, no one ever dreamt of such a thing.

3. But even if the *letter* of the statute should be judged to give this fearful power, and Government scruple not to call it into activity, after fourteen years' slumber—even if the King's Court, and his Privy Council, were willing to enforce it, and the clearly illegal and vexatious powers with which the Stamp Act clothes the Company's Board of Revenue, and all its officers—still, the letter of this same statute, 53 Geo. III., only confers the power of levying, within

Calcutta, such taxes as may be *lawfully* levied without*. A more important question thence arises, namely—WHETHER STAMP TAXES ARE LAWFUL, EVEN IN THE PROVINCES BEYOND CALCUTTA? We are prepared to contend *that they are not*; nay more, that this Government has no *legal* power to impose, at discretion, fresh taxes, of any sort, on the provinces.

Every Indian is a subject of the Crown of England; and the sovereignty of His Majesty over the Company's territories, always asserted by constitutional lawyers, has been placed beyond doubt by the formal declaration of that right in the very statute just quoted. Rights of the Crown are co-relative with privileges and liabilities of the subject; and we deny that the Company may levy any taxes whatever in India, except by authority of Parliament. Where is any general delegation of such authority to be met with? Not in this statute, 53 Geo. III., which only speaks of such taxes as may be *lawfully* imposed on the provinces. What portions, then, of the provincial taxes does it mean to designate are "LAWFUL?†" Such only as have been recognised in some existing statute. If we refer back to the short Acts of 1767, 1769, and to 13 Geo. III., 1773, the Company, we find, were to enjoy *the revenues of India* for specified periods, on condition of paying certain fines yearly†.

By 33 Geo. III., 1793, a similar composition was stipulated for twenty years, expiring in 1813. If

* A perplexing case of casuistry may be put: Taxes (Stamps) on all stages of law proceedings are levied in the provinces. If these are "lawfully" levied *there*, it would follow, on the Government construction of the 98th and 99th sections 53 Geo. III., that, like stamps on proceedings *in Calcutta* (*i. e.* before the King's Court), are also "lawful." *Must* they accordingly be sanctioned and registered by that Court? But who supposes that the Judges would *even listen to* such an interference of the Company's executive with the course of justice or procedure in His Majesty's Court?

† Never yet paid *but once*.

those statutes be taken to have legalised the revenues *then in existence*, that condition could only include the great items of land revenue, salt, and opium, and a few trivial matters, *perhaps*, besides. But what becomes of the legality of law taxes and stamps, imposed in 1795, and extended in 1824*; and of various other duties, transits, excises, &c., laid on since 1793, when Lord Cornwallis, at the period of his permanent settlement, had taken off almost every description of Moffussil tax, except those of land rent, salt, and opium? In the Act of 1813, the old system, of an annual money fine from the Company, was relinquished, and any surplus from the territorial revenues of India was directed to be divided and appropriated. But even if this appropriation be widely construed to sanction, tacitly, all imposts as they *then* stood, still that sanction does not legalise any provincial taxes, new in kind (nor the increase of old kinds), imposed *subsequently* to 1813, particularly when coupled with the solemn declaration of the Crown's undivided sovereignty, then first emitted.

If this argument be sound, stamps in the Moffussil, at least since 1813, are illegal, and therefore stamp duties in Calcutta, in 1827, equally so.

In proof of the strictness with which lawyers construe such things, it may here be noticed, that 53 Geo. III. unequivocally sanctions the levying of customs in Calcutta *prospectively*. This gave rise to doubts, and more than doubts in India, as to the legality of antecedently-levied customs; and to prevent threatened law-suits for their recovery, the Company were obliged, in the very next year (54 Geo. III.), to

* It is a remarkable fact, that while Secretary Prinsep, in his reply to the Petitioners, 12th April, 1827, par. 7, affects to speak of stamp taxes as if in force in the provinces, the *provincial* Stamp Act, of 1824, had been abandoned in 1825, by instructions from Government to their officers. It is impossible for a writer, *without the pale*, to be exact in dates, &c., as all proceedings of this nature are profoundly secret.

seek the protection of a declaratory law, legalising all previous customs! It may further be noticed, in proof of the importance attached to registration in court, which Government, in this instance, have in vain tried to escape, that, although the right to *customs* in Calcutta is now so distinctly conferred, it is only by means of having the goods *in possession*, that the duties can be exacted by Government. But none of the penalties, provided by the local custom-house regulations, can be afterwards enforced on persons or property; because the Government has not chosen to *register* their penal regulations—a thing always avoided, if possible; and their advocates-general, and law advisers here, have accordingly dissuaded them from coming into court for penalties, because of this flaw in their title.

PROP. II.—The constitutional question—That there is no difference as to immunities or liabilities, between the inhabitants of Calcutta and of the provinces, "in the eye of the legislature."—*Prinsep, par.* 7.

It has been the object of the earlier portion of these sheets to show, that this startling proposition is wholly unfounded in fact, history, and law. The ancient settlement of Calcutta, with its settlers, European, Creole, and Native, has been endowed *in all times*, and before the Company held any footing in the interior, with English laws; and therefore with all English privileges, not specifically taken away by Parliament. The foundations of this right were laid long before the present East India Company existed*; and the King and Parliament have confirmed

* 1661. English laws established for all Company's settlements, Car. II.
1696. Calcutta founded and settled.
1708. The present United East India Company established by Lord Godolphin's award.
1726. First Charter of Justice, Geo. I.
1754. Second Charter of Justice, Geo. III.
1757. Company's territorial conquests began.

those fundamental differences of position between Calcutta and the conquered countries, in every subsequent Charter and Act.

PROP. III.—That the Company and their Government here have always been aware of the unbounded extent of powers conferred on them by the taxing clauses of 53 Geo. III., to be used at their pleasure. These have been called into force at Bombay, &c.—*Prinsep, par.* 13 *and* 14.

To this it is replied:—

1. If the Company were conscious of possessing such powers, no one else imagined this, nor has the claim ever before been urged, or publicly refered to, at home or abroad, at the time of last renewing the Charter, or since.

2. If it were correct, that the power had been put in force at Bombay since 1813, in the shape of assessed taxes on horses, carriages, &c., we, of Calcutta, who understand our rights better—who are bolder in risking the displeasure of a Government which holds every man's person and property in its hands—or who have greater reliance on the spirit of our King's judges, and the justice of Parliament, cannot be "concluded" by the acts of the Bombay Government, or by the endurance of its little and feeble community.

But the *fact*, in regard to Bombay, is *not* such as stated. The assessed taxes of Bombay are known to be of *prior date* to 53 Geo. III.; and they are, besides, of the nature of a purely municipal tax for roads, cleansing, and police, such as Calcutta pays (by statute 33 Geo. III.) in the shape of five per cent. on the rents of all houses.

PROP. IV.—That the stamp tax is *necessary*, because Government has not revenue enough, from the old lawful sources, for its wants.—*Prinsep, par.* 11.

We answer, of this necessity, or of these wants, we have no means of judging;—if the tax be legal,

there is no need to plead them—if it be illegal, or questionable, they may be fairly pleaded, as a good reason for asking us to *tax ourselves*, and so help Government to make up the deficit—but not as a good reason for expecting us to submit to exaction by force, or to admit an insidious precedent, in a species of taxation, novel, illegal, unconstitutional—and ushered into existence, accompanied with the broadest declaration of unlimited rights to exact our whole substance, if deemed "necessary."

Secretary Prinsep insists that we are bound to give credit to his simple assertion—that our governors do really need additional supplies; and we are told, in the same breath, that we have evidence of their wants in the raising of loans. *This* circumstance, however, proves nothing; for we have repeatedly seen the Government raise loans, when the accounts subsequently laid before the Parliament show larger surpluses to have been remitted to England; the loans in question being raised for financial purposes, to reduce public interests, or advantageously pay off principal of debt. Indeed, we have seen (from the same sources of information) loans raised, and at enormous interest, by the Government of Calcutta (1818), to the great displeasure of the absent Governor-General, Lord Hastings, who pronounced the measure to be uncalled for by any public necessities. This fact has established, by the best of all authority, that the Local Government is not *always* and *necessarily* entitled to the "credit" claimed for it by Secretary Prinsep, whenever it shall please to declare that its "necessities" require additional supplies of money. But why argue this point? We may *conjecture*, or we may not, that there is a want of money in the Treasury. We may *think* Government has done wisely or foolishly in getting into such a predicament; we may *surmise*, or be wholly ignorant of the causes which produce the alleged deficit; we may have our doubts as to the real or ostensible

purposes for which more supplies are wanted, and whether they are justifiable and laudable, or the reverse; we may have our private and individual opinions as to whether economy and retrenchment might not supply wants as effectually, and more becomingly, than fresh taxes. But what have the inhabitants of Calcutta, as a community, to do with all this *? The Government never condescends to hold communication with us, except by proclamations, by taxing edicts, and by commands. *All* its proceedings are kept profoundly secret from us; we have no share in its councils, and ought not to be anywise responsible for, or sufferers by, its failures. The person and property of every Englishman under its rule lies at the mercy of those who may imprison and banish us at discretion. We exist here but by sufferance, and we are unceasingly and unsparingly reminded of our tenure by the Government and its tools, if ever we murmur against its sovereign will and pleasure. We have no voice in the nomination of those set over us. From one end of India to the other, no subject of England, European or Indian, has any thing to say in the choice of one single functionary, from the councillor or judge down to the lowest police myrmidon. No aristocracy—no corporations—no collegiate bodies—no "institutions"—no public bodies exist among us, who might influence Government, or through whom Government might hold communication with its subjects, even in the metropolis, if it were disposed to this condescension. We are forbidden to censure the public conduct of any in authority, even of our

* It is, indeed, the favourite and incessantly-urged position of the Company, its servants, and flatterers, that there is "NO PUBLIC" in India—no community, even in the metropolis—having any pretensions to political existence, or general rights and feelings as a body, except the "right" of addressing eulogies and flatteries to rulers. We presume it will now, however, be granted, that the "no public," non-existing public, has one other inestimable "right"—that of being allowed to pay taxes, without its own consent, even to the last shilling of its property.

judges, under pain of destruction to the printer's property, and deportation of the European offender. We are forbidden to meet, in the legal and constitutional form, under menaces of the like extreme punishment, and of the Court of Directors'* "high displeasure." We have not even any organised or sure method of communicating our grievances to any of the national or Indian authorities in England. And is it from a community so situated,—at the mercy of a haughty, secret, and arbitrary power, which is only kept under by some slender apprehensions of public odium *in England*, and harassing discussions *there*, not by any tenderness for *us*—is it from such a community that sympathy is expected for the wants and necessities of masters, who own no reciprocal sympathies towards those they rule? If we are to be taunted every day, as possessing none of the rights of a *public*, even-handed justice, at the least, demands that we shall not be called upon, in time of need, to pay the contributions of a *public*, or to testify the feelings of one. If we have nothing to do with the laws but to obey them, those who would reduce us to a point in the scale so nearly approaching the servile state, must be content to reap as they sow—to put up with the bad as well as the good qualities of our condition.

PROP. V.—That Stamp Taxes are in themselves a good kind of tax; that they fall on the opulent, and not on the poor.—*Prinsep, par.* 15.

We are bound to treat the understandings of our countrymen, to whom these sheets are addressed, with somewhat more respect than Secretary Prinsep has shown for ours, when he put forth propositions so startling in these days; when some knowledge of the horn-books and primers of political economy is

* See the Sheriff's announcement to the requisitionists, that the meeting which he had called was forbidden by Secretary Lushington, under instructions from the Court of Directors of 1806.—Appendix, Nos. IX. and X.

supposed to be possessed by financiers who tax, and people who are taxed; we may, therefore, decline arguing such rare and novel positions, contenting ourselves with the simple counter-affirmations, that Stamp Taxes in general, but particularly in a state of society like that of India, are unproductive, costly, and harassing*. Such stamps as are levied on law proceedings, in whatever shape or stage, are unqualified nuisances (as admitted lately by Mr. Chancellor ROBINSON); being, in truth, bounties on injustice, and aggravations of the wrongs and sufferings incident to feebleness and poverty. Such stamps as are levied on transfers of property fall on the needy and the borrowers; not, as our Secretary supposes, on the lenders and the rich. But who, may it be asked, are the rich men, and "*opulent*" classes, in the present state of Indian society, upon whom it is expected that the burden of Stamp Taxes, on justice and transfers of property, shall fall? The number of *natives* in opulent or even in easy circumstances is very small indeed; and as to the Europeans, the man of law shifts the tax on his client—the man of money on his constituent—the man of traffic on the consumer. But the civil functionary—the military man—the chaplain—the physician—the pensioner in retirement, have none dependent on them upon whom they can shift the burden.

Upon these last, as on all the poorer classes and *employés*, stamps will therefore fall, like a property tax, with undivided force; and upon none others of our upper orders, as there is no class among us, besides those mentioned, who live, as yet, on fixed incomes.

* See Dr. Franklin's observations on the effects and incidence of the *celebrated* American Stamp Duties.—Life of Franklin, Vol. I. pp. 316, 326. Yet British America, in 1775, though not containing one fortieth of the population of British India, was forty times more advanced in the scale of civilization, and more able to support such burdens.

There does seem something of self-denying virtue, therefore, in this infliction by the Company's servants on their own orders; but the uncharitable will perhaps ascribe it, in some small degree, to craft or prudence, that their *first* experiment in general taxation was tried in the plausible shape of a burden on their own body, who hold their situations at pleasure, and dare not join with their fellow-citizens in resistance or reclamations against illegal, unconstitutional, or unjust acts of their honourable masters.

Many individuals, too, not in the Company's regular services, but who depend more or less on the favour of the Government, and the patronage or influence of men in office, are intimidated or deterred from joining in our petitions to Parliament against UNLIMITED and SECRET TAXATION. These successful arts, on the part of Government, must operate extensively in thinning the numbers of the petitioners. We may count on every advantage being taken of this absence of official and influential signatures, to give an invidious colouring to our representations. We shall be told, of course, that they are "got up" by a "*factious minority*" of "radicals," "jacobins," or whatever may be the nick-name in vogue; and not what in fact they are, the honest, temperate, and constitutional expression of opinions *common to* ALL who are free to think, and dare to speak and act for themselves.

PROP. VI.—That it is "just and proper" Calcutta should bear equally with the provinces its share of the public burdens, in return for protection and due administration of justice. Hitherto, Calcutta has contributed "little or nothing."—*Prinsep, par.* 7.

This proposition consists of two distinct enunciations—one of fact, one of opinion; that we *do* pay "little or nothing," that we ought to pay more.

I. As to the fact:—

The contributions of this large and populous city

to the public treasury consist partly of *direct*, partly of *indirect* payments; the former comprehending all that we pay *in the first instance*—the latter, all that we pay as consumers, or through other *indirect* channels.

The payments under the first head, are:—

1. Sea customs; amounting to nearly two millions and a half sterling, since the æra of the free trade, 1814, averaging little short of 200,000*l.* a year, of which Calcutta advances the whole.

2. Inland customs and town duties, on exports and imports by land, or by inland navigation,—the amount very large, but unknown to the inhabitants, as the Government communicates nothing connected with the public finances.

3. House tax: five per cent. on rent of all houses, which, by statute, may be increased to seven and a half per cent*.

4. Ground rent, shop taxes, and other similar dues of less importance.

5. Excises on spirits and drugs.

6. Harbour—river—pilotage—mooring duties—light-house charges, very heavy in amount, and supporting a *magnificent* marine establishment.

7. Law taxes, in the shape of fees of all kinds to

* This tax, levied by Act of Parliament 33 Geo. III., is *supposed* to be assessed by the King's justices of peace in quarter sessions; but in 1821, when the grand jury, who were summoned as usual to assist, showed a disposition to *enquire*, and to exercise their functions, instead of merely going through the forms they were abruptly dismissed, and have never since been allowed by Government to meet. The taxing goes on, nevertheless, by members of council and justices of the peace, who account also to themselves, undisturbed by inquiries or clamour of tax-paying jurors. If this usurpation and innovation be *legal* (which we do not believe it is), at any rate it is a pretty-striking indication of the spirit of hostility to all privileges and popular institutions. Another proof was given of it, in 1819, by the final extinction of the *general* vestry of our only parish, in favour of an usurping *select* (self electing) vestry of six.

the Supreme Court offices, in the Court of Requests, sheriff's poundage, &c. &c., paid by parties and suitors, but not the less taxes on justice.

8. Post-office dues, sea and land.

9. Voluntary contributions for *public purposes*, as hospitals, schools, support of poor, erection of places of worship, colleges, education and book societies, churches and church seats, missions, town halls, registry offices, &c.

The *indirect* contributions of the inhabitants of Calcutta to the public treasury, as consumers or otherwise, are numerous and heavy.

1. To the great *staple* of provincial revenue, the land tax they contribute in various indirect ways. It may, however, be urged, that inasmuch as the Company merely stands in the place of general landlord, and only absorbs the *rent*, no part of that burden falls on the consumers of the produce. But if the absorption of so large a share as one-half of the gross produce (in the great bulk of the Company's territories), keeps the cultivators in hopeless poverty, prevents the accumulation of farming capital, forces a system of culture by means of usurious advances, and so leads to enhancement of the cost of production, then the Calcutta and other consumers do pay more than they would have to pay under a better system of capital and competition. They pay not only in their consumption of produce, but in wages, in price, and keep of cattle, in manufactures, &c. It is not a little that they indirectly contribute, besides, in the shape of the vast capital they circulate all over the country, in yearly advances to cultivators and manufacturers; for indigo, sugar, coffee, cotton, anatto, silk, lac dye, piece goods, drugs, &c. &c., amounting to several millions sterling, thereby facilitating the payments of land rents, by cultivators to landholders, —by landholders to Government; and, in particular, enabling the Government, in those unfortunate regions which are not protected by a permanent assessment, to

rise in its periodical demands *for increase of land revenue.* Calcutta not only is a large market for consumption, but for export of grain, &c., to other ports, being, in truth, the only port of external commerce in the whole of the Gangetic provinces. If this does not benefit the Government's *direct* land revenue within the three protected provinces of Lord Cornwallis, it benefits them *indirectly*, by the diffusion of a degree of prosperity, by the gradual raising up of a class of real owners of the soil, and a class of farming capitalists in the place of *métayers.*

2. To the salt revenue Calcutta contributes, not only by the immediate consumption of its vast population, but by its exports of provisions. All the salt produced in the various districts, by rigorous monopoly*, is brought to Calcutta, and there sold by the Company at eight or nine times the first cost of production. The purchase-money is, in the first instance, entirely advanced by the capitalists of the metropolis.

3. The whole of the *opium* revenue is in like manner advanced by Calcutta capitalists, as in the case of the sister monopoly of salt. The drug is *all* exported from this great market, at the charge and risk of the merchant, and great risk it is; but Government secures its vast profits, in the first instance, by him and through him.

4. As the great consumers and exporters of manufactures and produce, the inhabitants of Calcutta pay a large proportion of any transit duties, or other burdens of a local and provincial nature, to which such produce is subject.

5. They pay, indirectly, in enhanced cost of production, for articles (silk in particular, cotton, &c.) in which the Company engage as traders and manu-

* Saving a trifle for the consumption of the tracts at a distance, where the salt is manufactured.

facturers *directly*. The Company is the most extravagant and expensive of dealers, and the most formidable of rivals to the private grower and manufacturer in the provinces. It has an indefinite command of money, at a cheap rate; and, contrary to the spirit of the Act of 1813, if not the letter, obtains numberless advantages for its *commercial* dealings from its territorial establishments, and their authority as well as influence, under the Government regulation of 1793, founded on that of 1789, which remains unrepealed; notwithstanding the change of system and equality of free trade enjoined by the last charter of 53 Geo. III. So much for the *fact* that Calcutta contributes "nothing" to the public revenue. We proceed to the second member of Secretary Prinsep's assertion.

II. That it is "*just*" and "*proper*" we should pay more than we do pay.

To this matter of *opinion* we might content ourselves with replying, that as it was grounded on singular ignorance of the *fact* that we do pay *any thing*, the Secretary might probably retract this opinion, when he learnt that we do pay, and pay largely, and in good proportion.

But we are content to meet the adversary on broader ground, and to maintain, not merely that Englishmen pay *enough*, but pay *too much*, for the degree and amount of benefits derived from the Company's paternal rule. It is the more necessary to meet this sixth proposition fully, because the position taken up is plausible, and wears even a *popular* face. If, indeed, the Company's servants could make good their ground, and satisfy the public of England that we are cherished and fostered by the best of governments, yet ungratefully refuse to pay our just quota of expense for so many blessings as we taste, with what decency could we come before Parliament to protect us against a claim so reasonable? The *quid pro quo* is asked of us; nothing

can be fairer. But what is the real value of this *quid pro quo* to an Englishman in India, not being within the pale of the Company's service? If our ingratitude is to be measured by the standard of benefits conferred on us, the first process, obviously, towards arriving at the truth, is to guage accurately the dimensions of these boasted obligations with which we are graciously loaded.

This may readily be done by a summary enumeration of the *privations* and the *hazards* to person and property, which every Englishman dwelling under the East India Company's beneficent flag has to endure. If it be said, in palliation of the evils in this frightful catalogue, that they are the conditions of a servitude which we voluntarily take upon us, and if apathy or habit have disciplined down English ears to the point of admitting *that* to be a sufficient excuse for those who inflict such degradations on their distant countrymen, we have but this to urge in reply:—

"We emigrated hither by choice, if that be indeed a free option which compels the swarming of the hive when population within presses on subsistence, and every occupation at home is overstocked with competitors. We were not wholly ignorant of the disabilities which we were to incur abroad; but, forbidden to colonise or settle in India, we looked for something of compensation—to exemption from certain local burdens, and to the hope of returning, enriched ourselves, to enrich our mother country. Deeply as we cannot but feel the privations and the degradations of our condition, we are not *now* appealing against these; we are but stating facts undeniable in themselves, though little known to England. But we do complain, and loudly too, that while all these disadvantages are continued in undiminished or increasing force, our compensation is withdrawn, and we are distinctly menaced with taxation, the amount and shape of which, we are told, is to depend solely on the will and pleasure of arbitrary task-makers,

who own no sympathies with us, nor we with them. If we are henceforward to be vexed with all the novelties and devices of taxation, as in England, grant us that freedom and those privileges which alone enable Englishmen to support a burden that otherwise would pass endurance."

The enumeration of disabilities follows:—

1. An Englishman is not free to resort to the British possessions in India but by licence, revocable at will by the granters (the Company), or by their servants abroad. The permission is only obtained with great difficulty, and as a favour, clogged with forms and fees, and with indentures which are interpreted as tying down the tolerated interloper to submit himself unreservedly to any regulations or mandates of the Local Governments, whether binding or not, in strictness of law.

2. Being in India, "your free-born Englishman" is liable to instant transportation, not merely out of India, but all the way to England, as a close prisoner on board a Company's ship, on the footing and with no better treatment than a common soldier or sailor, unless he can pay heavily for better accommodation*. He may be sent, in this way, from India round half the globe, by China† or Bencoolen‡. The Indian Governments contend that he may be kept closely imprisoned, for an unlimited time, until they can ship him off§. All this cruelty and wrong is inflicted at the simple will and pleasure of any governor, without the obligation of assigning a reason to the sufferer, whose property, invested and scattered in all imagi-

* Case of FAIR, transported from Bombay by Governor ELPHINSTONE.—WEST, C. JUSTICE; CHAMBERS, P. JUSTICE.

† Case of FAIR—*supra*.

‡ Case of ARNOTT, Calcutta, 1823–4, twice banished.

§ Case of ARNOTT—*supra*. Case of Dr. MACLEAN, Calcutta, 1778. Case of DUANE, 1792. Lords Wellesley and Cornwallis, Governors-General.

nable ways, is therefore as much at the mercy of irresponsible power as his person*.

3. An Englishman in India is forbidden to travel, or to go ten miles distance from Calcutta, Madras, or Bombay, without special leave: if found beyond that limit, without the requisite passports, he may be seized by the meanest retainer of the Government, imprisoned, and sent back to his bounds. Refreshing proclamations to this effect are periodically issued† in all the gazettes, with a view, perhaps, of keeping up the respect for the European character in the eyes of the natives of India, which the Company are prompt to assure us (when it suits their purpose) is so essential to the support of our "empire of opinion!" Independently of the wantonness and folly of this local restriction, so dearly cherished by the Company and its servants abroad, we ask, with what shadow of justice is it that Secretary Prinsep claims to call on Englishmen, who are thus confined to Calcutta and barred from free access, for themselves and their industry, to the provinces, for taxes and contributions to *general* and *provincial* purposes of state government? The petitioners broadly affirm, that one of the reasons why Parliament *could* not mean to subject them to *general* taxation, was, because they were thus precluded from general access to the provinces. On this argument they strongly rely; and, in proof of the correctness of their view of the intention of Parliament, they quote the remarkable fact that the only duties distinctly and specifically imposed on them are the customs of their port of Calcutta, and the house tax, for municipal and police purposes, imposed by the King's justices of peace for the city.

* Case of BUCKINGHAM, Calcutta, 1823; deported by ADAM, Acting Governor-General.

† For a Bengal specimen, see Appendix No. XVIII. Those of Madras and Bombay, where the Governors are *Company's own servants*, are still more severe and over-bearing.

4. An Englishman is not only forbidden to resort to or pursue his private occupations in any district without special licence from a secretary, but he may not so much as pass on business or pleasure into an adjacent district without similar permission. All these licences may be capriciously recalled at will. It is needless to add, they *may* be abused by local authorities to purposes of official pique or private quarrel, where one party only has the ear of Government, and in a frame of society in which all office and authority, provincial as well as metropolitan, from the top of the scale to the bottom,—political, judicial, fiscal, commercial, and police, may be accurately described as the patrimony of a particular caste. That caste, educated apart from others, and in early youth trained to the peculiar habits and ideas of the service for which it is destined, rises in employment by seniority; and the members are naturally imbued with a strong *esprit-de-corps* in favour of their own order, and with an opposite feeling for "*interlopers.*" Many of these intruders in the provinces, in point of personal qualifications, as well as the accidents of birth and fortune, tread too closely on the heels of the district functionaries to be regarded as desirable neighbours; their eyes, too, are more open to what passes around them than those of the obsequious native population. Being greatly dependent on the cordiality and goodwill of the native and Creole inhabitants, among whom they exercise their industry and diffuse their capital, a sense of common interest, if no higher motive be present, engenders mutual sympathies, and gives the European planter a natural weight in his district, by no means agreeable to the man in office, if he be a person of ordinary mind. But for the strict fetters on the liberty of discussion, which *happily* turn the balance again in favour of authority, there is no telling how much benefit might not be mischievously wrought out of this inconvenient rivalry between the two classes of functionary and non-functionary Euro-

peans, in the hands of a benevolent and impartial government. The almost universal hostility of the functionary class towards the press may be comprehended without much difficulty; but a simple man might possibly marvel why the same hostility should be felt by the *benevolent* masters of this class, and still more so by the *masters of those masters* at the distance of ten thousand miles!

5. An Englishman in India may not manufacture salt or opium, two of its great staples; he may not even openly purchase salt at the Company's public sales; he may not deal in any foreign opium or salt; he may not trade in tea without a licence; his sugars and rums, and other produce, are excluded from competition with the West India and Mauritius produce at home, and even in New South Wales.

6. An Englishman may not settle, colonise, invest his fate or his fortune, in the soil of India; he must not hold or farm lands. This is the great and standing law of the land, enacted in 1793, and confirmed again and again by the Company, who regard this, and the power of summary deportation, as the corner-stones of their existence. One or two rare and special exceptions, slowly granted for clearing a salt wilderness, or trying an experimental plantation, do but confirm the general rule; but till that rule is abolished utterly, no agricultural advancement can have place in India, and we must go on, content with producing bad sugar and worse cotton!

7. Englishmen in India may not meet together in bodies to consult for their common protection or advantage, without special leave from Government. How likely it is that such licence will be given (except for the usual and always agreeable purposes of besmearing with valueless adulation their rulers, past, present, and future), may be seen by the obstacles of every sort which, on the present occasion, have been thrown in the way of the petitioners to Parliament. It is true, they have persisted in

meeting; and a petition has been persevered in by an unexpected effort of unanimity and spirit, that has struck a note of alarm through the whole ranks of Government functionaries; but this effort has been achieved under peril of the "HIGH DISPLEASURE" of the Mock Majesty of Leadenhall Street*, denounced against the delinquents, in menacing letters to the Sheriff of Calcutta, and proclamations in the Government Gazette. "*High displeasure*," in the dialect of the Company, being interpreted into plain English, means deportation of the European offenders; and if these happen to have been too numerous and respectable to render so sweeping a vindication of insulted dignity safe or prudent, we have to thank the fears, and not the good intentions, of those who possess, beyond question, under 53 Geo. III., full power to turn every European out of the country, by a simple warrant to a town major, under hand and seal.

8. Europeans in India are not only intimidated from giving free vent to their opinions in speech and writing; they are, further, expressly forbidden to communicate their thoughts by printing, under pain of banishment and ruin, which, in offences of this nature, have often been shown to be no empty threat. The circumstances under which this prohibition was obtained by a Company's governor, from

* Let the reader judge of the spirit which animates twenty-four English gentlemen in the nineteenth century, in their administration of a great dependency of the empire, by the following quotation:—

"Those orders" (of the Directors) "render it imperative on the Local Government to *prohibit* '*all deliberative assemblies*' of persons residing in India under the licence and protection" (*protection!*) "of the Honourable Company, and more especially such as have for their avowed object the consideration of the *extent of the powers of the Supreme Government.*" Secretary Lushington to Sheriff Plowden, 10th of May, 1827.—Appendix, No. IX. Query—After this specimen, will Parliament renew the Company's Lease?

a King's judge, have been stated elsewhere. Here it may suffice to call the attention of thinking men to the mischievous effects of this gagging bill on the population of India, whose persons and property are, more or less, at the mercy of so many men, linked together in authority, all over the country—men who have so little to fear from superiors of their own caste, for any abuses or vexations they may commit, and who are restrained only (where they are restrained at all) by dread of public opinion. Hypocrisy or fatuity may assert that the press of England is an efficient check of Indian misrule; as if that engine could be brought into effectual play without being fed by information, and directed by opinions fully and freely expressed on the spot! or, as if it had been found so easy a matter heretofore to divert the smallest portion of English sympathy or newspaper vigilance from nearer and dearer interests and passions at home, to the distant and uninteresting concerns of India!

In all the discussions that have lately taken place, on this important topic of the Indian press, its wily adversaries have incessantly and successfully laboured to give a *political* character to the question, and so to work on the fears and the passions of the "most thinking people" of England, who know little and care less about India, and are content to surrender their judgments to the guidance of the very men who have a manifest and sinister interest in extending their own power, and silencing all remonstrance and complaint*.

9. An Englishman in India, besides being deprived of the chief benefits of the Habeas Corpus Act, by means of the wide and sweeping engine of summary transportation without trial, is further deprived of the advantage of trial by jury, in all civil cases. The Bench of Judges took on themselves, on their first arrival in 1774, to exercise the functions of civil

* Vide Note C.

jurors, under a construction of the Royal Charter, which was strenuously disputed at the time, both at their own bar, and in fruitless petitions to Parliament. The only good reason assigned for the usurpation was the scarcity of competent men to sit on juries—an objection which no longer exists in Calcutta*. It is an undoubted grievance for an Englishman to be barred of this important birthright. There are many issues of fact, connected with equity suits, and there are numerous questions of damages between parties, which can never be adjusted *satisfactorily* but by the verdict of fellow-citizens†.

If a system of indirect taxation, enforced by actions and penalties, and exchequer proceedings, such as this Stamp Act abundantly promises us, shall be established, this grievance will be infinitely aggravated, since the Government will become, in fact, *parties* in a multitude of civil suits with individuals, which it would be contrary to all constitutional law and justice to leave in the hands of two or three judges, holding their places at the pleasure of the Indian minister—the approver of the law.

There have been, and there are, individuals on the Indian bench who would do honour to any court in England; but history already tells us of some, and does *not yet* tell us of others, concerning whom so much could not safely be said.

It is not the least inconvenience of the system, that the bench, when full, only consists of three judges—a despicable economy having lopped off the fourth. In consequence, deaths and periodical retirements (with-

* Mr. Wynn's Jury Bill, 1826, excellent so far as it goes, provides an abundant supply of *criminal* jurors, but says nothing of *civil* juries.

† An innocent man, libelled, is deterred from bringing his action—the only mode of *truly* clearing his character (as it admits of justification), because he is taunted as seeking a *bench* verdict, and being afraid to go before a *jury*. If he indicts the libeller before a *jury*, he is taunted with taking a course which hinders all justification of the libel !!

out any provision for filling vacancies on the spot), leave us frequently with only two judges, and not unfrequently with but one, on the bench. Even with two present, the judgments of the Court, and its verdicts, in quality of jury, are the judgments and verdicts of a single judge—the senior. At his mercy, for the time being, lie laws and liberties*, person, property, and even life, inasmuch as the sole prerogative of pardon, or commutation, in criminal matters, is vested, not in the executive, but in the Court itself. Nor should it be forgotten, in estimating this grievance of a scanty bench, that from the systematic negligence and apathy about Indian affairs which so remarkably characterises the legislation of England for this great dependency, the Court is left to exercise a far wider power of interpreting †, defining, and *making* laws,

* STRANGE, C. J., Madras, 1809 (two judges present, and SULLIVAN, P. J., strongly dissenting), ruled that Governor BARLOW should be suffered to prevent the printing of a trial in which a jury had given a verdict obnoxious to his government.

MACNAUGHTEN, P. J. (alone on the bench), Bengal, 1823, passed the law for subjecting the press to government licences, revocable at pleasure; while a full bench, at Bombay (1826, WEST, C. J.), declared the same regulation repugnant to law!

† Case of NUNDCOMAR, 1776. English statute law of forgery declared applicable to India. IMPEY, C. J., convicted and executed him. The statute Geo. II. has since been declared *not* to apply to India! and forgery is punished only with transportation.—See MILL, Vol. III, p. 563.

Case of GRANT, Bengal, 1809, RUSSELL, C. J. Law of arson declared applicable. Capital conviction followed on this boyish frolic of a mischievous cadet! Sentence commuted to transportation to New South Wales.

Cases of DUANE, 1793, Bengal, CHAMBERS, C. J.; and ARNOTT, Bengal, 1823, MACNAUGHTEN, P. J. (two judges present). Similar cases of Habeas Corpus, to decide if Government could imprison indefinitely. The two decisions contradictory to each other in every point! Query—Which is *now* the true law?

See cases, recently, of landed tenures (1827, GREY, C. J. Bengal), the subject of petition now before Parliament, as having unsettled all former decisions. See also numerous cases in the Supreme Court, declaring, *pro re nata*, what English laws were and were not applicable to India.

than consists with sound principles, or becomes the judicial office, in well-regulated policies.

10. An Englishman, in India, is liable to imprisonment for life, in the event of failure in business, as there are no bankrupt or general insolvent laws in force. He is entirely at the mercy of any creditor; and this is one of the perils, or hazards, or disabilities of his condition in India, compared with his position in his own country. It is a disadvantage from which the natives in the provinces are comparatively free.

11. To sum up the catalogue of disadvantages, either directly *imposed* by the acts of the authorities at home and on the spot, or *suffered to remain* in force, without any zealous endeavour of the highly-influential Governments in India to have these disadvantages removed, Englishmen in India have no voice in the choice of any men, or any measures; no *organs* for holding communication, or expressing their thoughts and wishes to the powers that be, here or in England. They are now declared liable to *secretly devised* taxation, unlimited in kind or degree; they exist but by sufferance in the country, and are subjected to the closest surveillance, and jealous watchfulness, while they remain. If they are protected by the military power of the Government from the personal perils and hazards of war, their property is subjected to the most violent and sudden fluctuations, by the financial measures consequent to rash, ill-managed, or unsuccessful hostilities. Even in times of profound peace, when the public treasury is overflowing, and surpluses and tributes are under remittance to England, individual property is exposed to sudden, unequal, and extreme fluctuations, owing to the cautious and profound secrecy with which a reserved and haughty Government—as if to show, in the strongest light, the opposition of interests between its subjects and itself—devises and executes its financial operations on the public debt.

In countries where the government reflects, and

represents the governed, measures for raising or paying off loans, and for increasing or reducing rates of public interest or exchange, are conducted with a publicity which gives time and opportunity for deliberation and choice; which has the effect of more or less equalising and distributing the individual losses which must follow in the train of such financial arrangements, however necessary and laudable. Under our close system of Indian Government, very opposite effects are produced; and these bear by so much the more severely on Englishmen, because they cannot invest their fortunes in landed estates, but are *obliged* to have recourse to the public stocks, as the best available security for trust funds, settlements, partnerships, societies, foundations, and the like.

Such, then, are some of the privations, disabilities, and disadvantages, under which Englishmen suffer in India. This is the sort of *quid pro quo*—these the blessings enjoyed under the Company's protection in India—for which, it is gravely said, they ought to testify so much gratitude, and to press forward eagerly with offers of the last shilling, whenever it shall please their honourable lords and masters to require the sacrifice!

Of a truth, it behoved the Bengal Secretary, and it will now be incumbent on the partisans of the East India Company, to draw a very highly-coloured picture indeed of the benefits of their system of Government, if they would set off a counterbalance to the detail of hardships here sketched out. That detail has not been volunteered by us, or brought forward in the vain expectation of immediate relief. Our hopes of this must be postponed till the period shall arrive when the Company seek, as seek they will, a renewal of all their privileges and all their power, at the expiration of their present lease. That will be the season when they must render an account of their long stewardship; when they may be challenged, with effect, to the proof of the good they have done to all

the classes of the King's subjects, over whom they have been permitted to exercise despotic* sway.

Our present task has been put upon us, at this time and place, by the plausible bold pretension, conveyed in Secretary Prinsep's assertion, that whereas we enjoy so many advantages under the Company's flag, it is "*just,*" that we, who pay "*nothing*" in return, should henceforward pay much.

We have, therefore, been obliged to show, not only that we already do pay very heavily, but that, instead of requiring advantages, we suffer manifold and weighty *dis*advantages. Where is our return for those payments—where our compensations for those evils?

The Secretary's enumeration of them is singularly slender as to details of benefits conferred, and deals largely in loose generalities. The whole is contained in one paragraph—the fifteenth, viz.:—1. Protection from external enemies. 2. Internal tranquillity. 3. Strict administration of justice. These are the "*inestimable benefits,*" in return for which the Secretary courteously insinuates (in the seventh, fifteenth, and seventeenth paragraphs), that we selfishly, sordidly, and ungratefully, seek an "inequitable exemption" from all burdens as a "privileged class," and endeavour, as the price of our "favour," to force the Government to confine its taxation wholly "to the poor!"

It is true, certainly, we have been in no danger in

* This designation of the Company's claim to power, as "despotic," is none of our inventing, but taken from the mouths of their own hired pleaders, as any one may satisfy himself by reading the India House Debates in 1824, and the Privy Council Arguments of 1825, on the press question. The speeches of their counsel, a certain Mr. Impey, at the former place, are edifying, for the boldness with which this claim is asserted. He says, "While *we* have the administration of the Government of India that Government *must always be despotic;* it has always been so: it will always be so!"—Debate at the India House, 9th July, 1824.—Oriental Herald for August, 1824.

this metropolis from external enemies, since the year 1756; and, with a few exceptions of terrible revolts, provoked by flagrant misrule and frequent exceptions of frightful gang-robbery, the provinces under Bengal have enjoyed a greater share of internal tranquillity since their subjection to the English than any native state—so far the Secretary's picture is accurate; and we will not press him too hard, by setting off against this security to our persons the severe damage and heavy losses to which our property is exposed (and under which it is at this moment suffering), from the effects on finances, commerce, and manufactures—of rash or costly wars, in which we have neither voice nor interest.

'But that we are blessed with a faultless, or strict, or even good "administration of justice," we do deny: we call on the advocates of the Company for the proofs of that hazardous proposition; and we have a right to throw the *onus* on them, because the single act of anxiously gagging the press—the only real security for the purity of justice in all countries—is a fair and legitimate ground of suspicion that all is not felt to be sound. Within the city, we distinctly avow our conviction—justice is honestly, though most expensively administered by the King's judges, notwithstanding the insecure tenure of their places*; and notwithstanding the seductions held out to those venerable persons, by the practice of frequent bench promotions, and by that special immunity from all public strictures on their public conduct, which that Court has *not* blushed to accept, when proposed by the Company's Government. The other superior tribunals also, that hold their seats in the city or neighbourhood, although not yet allowed the advantage of a vigilant press, and independent

* Case of Sir Henry Gwillim, Madras, 1806.—They hold their places *durante bene placito*, by 13 Geo. III.

bar*, we believe to be worthy of all confidence; nor is it any stigma on the respected individuals who form the courts in question, to say that they are benefited by the salutary vicinage with which they are surrounded. Thoughts and tongues cannot be restrained, though pens and types may; hence metropolitan tribunals, in every country, are necessarily better than such as are remote from observation. But the greater part of the capital of Calcutta is invested in provincial speculations; and none have a nearer interest in the *provincial* administration of justice than its citizens; the opulent native portion of whom are, in very many instances, landholders in the provinces to a large amount. We cannot, therefore, suppose, that in his Address to this mixed body of men, Secretary Prinsep meant to *exclude* the civil, criminal, and police authorities of the *provinces*, from his unqualified eulogy on the pure administration of justice under his government.

Yet surely the commendations of the Secretary, taken in this extended sense, are almost as rash, and little more accurate than his bold begging of the question, as to the exemption of Calcutta from any share of the state burdens. Who but himself can have forgotten the existence of a certain formidable document, with a far more formidable appendix, entitled THE FIFTH REPORT of the Select Committee of the House of Commons, in 1810, on this very subject of the Administration of Justice in

* We might add—though removable at pleasure, and at all times subjected to unseemly and unwise interference and correspondence on the part of the executive. See the very recent treatment of Mr. COURTNEY SMITH, Puisné Judge, Bengal, for expressing a judicial doubt (under the sanction of his oath of office!) touching the renewal of the Company's Charter. See the cases of two judges of the Supreme Native Court at Madras—GREENWAY and SCOTT, deprived of their offices with indignity, for judicial acts, unpalatable to their Honourable Masters, 1801.

India—a document seldom equalled, in parliamentary annals, for its copiousness, fidelity, and research; so truly creditable to the industry and the honesty of its diligent compilers; so honourable to the talents of many individuals whose evidence and sentiments the Fifth Report has preserved. In that single performance, facts and opinions are recorded which show undeniably not only that the greatest injustice and oppression prevailed in the judicial and revenue administration, but that such evils are inherent in the very nature of the system; and therefore not likely to be remedied without a fundamental change*. Will it be generally said that any such has taken place? If so, we await the proof; averring, however (even if notoriety and experience to the contrary were to go for nothing), that no very material alteration for the better is to be gathered from the printed papers and books that have seen the light since the compiling of the Fifth Report†. So far the contrary, indeed, is the fact, that, with the exception of productions that bear the impress of official *adaptation*, or to such as are the handy work of aspirants to place, profit, or pension, and of malcontents who have obtained a new light from the process of absorption into the House of Leadenhall;—with the exception of such productions, the mass of modern publications, when carefully studied, afford abundant proof that the internal administration of India, in the judicial, revenue, and police departments, is nearly as defective, grinding, and arbitrary as ever.

* It is to be remembered, that, from the nature of the revenue system of India (land and monopolies), particularly under the mischievous ryotwāree or village settlements, and generally wherever the assessment is not fixed, as much injustice (or more) may be endured, by the inhabitants of all classes in matters of *revenue* as of *law* or *police*.

† See Note E. at the end.

This much, at least, is notorious in Bengal:—

1. Enormous arrears of causes are still undecided in the Courts.

2. No attempt has been made to give the body of the people the smallest share in the administration of justice, by their own ancient jury or arbitration system.

3. No attempt at systematic legislation has been made; the old confused medley of Mahomedan, Hindoo, and British laws prevails, already swelled to an inordinate bulk, beneficial to lawyers, but not to clients.

4. Arbitrary detentions, and holding to bail of persons suspected of being suspicious—of starving parties and indigent *witnesses*, for indefinite periods, still prevail.

5. Justice is not cheap and accessible to the poor; it comes not, as in such a primitive condition of society it should come, "to every man's door."

6. Institution fees, and other taxes on justice, in every stage, though acknowledged by all economists and philosophers to be contrary to all sound principles, often productive of the greatest injustice, and though of doubtful *legality*, flourish in all their former vigour.

7. Venality and corruption, to a frightful extent, exist in the subordinate and stipendiary branches of the police and the courts. It is notorious that persons robbed, in many cases carefully conceal the fact, through fear of losing time, and sending good money after bad.

8. Violence and arbitrary punishments prevail, as they naturally must, where such sweeping power and influence, with checks so feeble, are entrusted to remote local authorities.

9. The Government evinces, in the rare cases which individuals have courage to bring to its notice, coldness and apathy, to say the least, in investigating complaints, and an habitual leaning to the support of

authority – the very reverse of what *ought* to be its disposition, where all the functionaries, high and low, are members of a privileged class*.

10. "Vigour beyond the law" is still put in force, to take the place of equal laws; and particularly against offending or obnoxious Europeans in the provinces†.

11. No material step has been taken, though so strongly recommended by Mr. James Stuart (*before he became a Director at least*), and so many other excellent authorities, towards throwing the police, and the preservation of the peace, into the hands of its natural conservators—the native gentry of superior intelligence, education, and influence.

12. The higher classes of natives are still carefully excluded, notwithstanding the advice of the ablest men in India, from every participation in employments of a high, lucrative, and honourable description. All such are jealously reserved for the conquerors; and by this, and the puerile or hypocritical dread of European colonisation ‡, all gradual amalgamation

* See the printed memorials to the Court of Directors by HAY, an Indigo planter, *v.* WOLLEN, 1826. BECHER (John), an Anglo-Asiatic Contractor, *v.* BLUNT, 1827. Case of the son of the excellent, but obnoxious RAMMOHUN ROY, *v.* MOLONY and others, 1827. See printed cases of MIDDLETON, 1825, and BECHER (Charles), 1826, *v.* BLUNT.

† Case of the brothers BETTS, 1824, Indigo planters, arbitrarily sent away in the critical height of their manufacturing season, and transported. The Court of Directors were glad to hush up this transaction, by an *immediate* permission to the injured parties to return to India, as they hushed up Mr. Arnott's, by a gift of 1,500*l.*: but the sufferers had been obliged to sell their plantations at a ruinous loss. Case of Lamb (W. Palmer and Co.), 1823, deported, but allowed in 1826 to return; and since mocked by the prospect of redress, still withheld. No case of oppression and ruin ever occurred, even in Indian annals, that more loudly calls for justice: it will remain an eternal blot on the Company, and on the memory of Governor ADAM.

‡ Be it noted here, once for all, that in arguing the colonisation question, the Company's advocates always sophistically affect to consider it as if the introduction of a numerous class of white

and fusion of the European native and mixed races is effectually hindered.

13. The Anglo-Indian Creoles are retained in the most depressed condition—excluded from all branches of the Company's service, and all valuable public employment. If a more liberal statesman, such as Lord Hastings, takes advantage of a time of need to introduce a selected few, even into the *irregulars* of the Company's army, as in 1817, they are deprived of their commissions, and ungratefully, mischievously, and insultingly dismissed (with breathless haste) by the Court of Directors, who love no intruders on that monopoly of patronage which, in a body so constituted, is abused to individual gratification and family benefit, instead of being exercised by the Collective Court as a public trust. Almost every dispatch from the Directors contains an affronting repetition of their scrupulous jealousy, in excluding any taint of Indian blood from their service; and each such repetition is proclaimed, in their gazettes and general orders, in the most public and galling manner*: and this, notwithstanding the warning held out by the impressive lessons of America!

14. The Company continue up to this hour to

labourers was the thing contended for. Not so! We only contend for admitting freely the *few* who can afford the cost and risk of emigrations to India; and of maintaining themselves when they arrive. The Courts and Laws are sufficiently strong to prevent the possibility of *such* colonists depriving the natives of their land or property, unless with their consent for value received; if it were otherwise, what can be easier or fairer than to make the judicial system strong enough for this purpose? All other intermeddling with the course of emigration is purely a mischievous and disguised love of monopoly and arbitrary power, under affectation of humanity and justice.

* The words used, and regularly published in the Government Gazette, are: that A. B. may be admitted into their service, "provided he is not the son of a native Indian." This disqualification extends, by an adoption far from creditable, even to the royal army; and, in practice, is carried down to legitimate children, the *grandsons* of Indian females.

violate their most solemn and not-forgotten pledges of a permanent land assessment in their western provinces, and persist in pushing the rack-rent system to the uttermost, wherever they can.

15. In many places, particularly under the favourite Madras régime of Sir T. MUNRO, the collector of revenue exercises judicial or police functions—an union truly unnatural any where, but most of all so where the revenue consists of the rent of land, and of monopolies of articles of the first necessity. The power of inflicting corporal punishment for revenue offences, is vested in these collector-prefects of police and their assistants.

16. The vocation of a native advocate remains a degraded and dependent one; for the practitioner admitted by favour is, on the loss of that favour, easily got rid of*. Even Anglo-Indians, though especially fitted for this post, if encouraged to devote themselves to it, inherit too much independence from the paternal stock, and are practically excluded.

17. Organised depredation and gang-robbery, accompanied with cruelty and murder, are not yet put down†; these are fostered by the general poverty and depression of the population, especially in seasons of distress or scarcity, and not a little kept alive by the demoralising habits of smuggling—a natural effect of the Company's monopoly of salt. The temptation is irresistible where the cost of production (in remote and wild swamps) is scarcely one-tenth of the artificial market price.

18. In fine, what has been done with all the Com-

* Case of MAHTAB ROY, a vakeel, or advocate, in the Court at Cuttack, 1826, illegally dismissed by the Commissioner; restored, on petition, by the Superior Court at Calcutta, and *legally* dismissed (as soon as reinstated) by the Cuttack Judge, "with the *sanction* of the Commissioner!"

† Case of IMLACH, Indigo planter, 1822; Paymaster MONK, 1826; Reports of SHAKSPEAR (John), HALHED and others, on the robberies and murders of the western T'HUGS.

pany's influence, and presumed paternal anxiety for their subjects of all classes, towards obtaining a *decently* speedy adjudication in England, of appeals from their own and the royal courts of India? Many *years* elapse before judgments can be had, at the hands of an ill-adapted tribunal of gratuitous and otherwise occupied judges, such as that which goes by the name of the "King in Council;" meanwhile, securities and suitors die, or languish, or abandon from despair, and from failure of the needful munitions of this distant and expensive warfare! Have the Company stirred a step towards the amendment of this crying evil? or do they wait supinely, till moved thereunto by judges abroad, who have little interest in such ulterior matters, or by governments that have less?

Under such a state of things, it may well be necessary to clap strict fetters on the tell-tale press! But how does all this square with Secretary Prinsep's intrepid predication of "strict administration of justice?" unless, indeed, words are to stand for things, forms for essences, and a cumbrous and costly apparatus of judges and tribunals, towering in imposing gradations, is to be taken as an equivalent, in full, for cheap and substantial justice?—SUCH IS OUR CASE. Although the history of many past years gives but slender grounds for expectation, that either the Parliament or people of England will be diverted from their undivided attention to nearer or dearer domestic interests, into any very vehement degree of sympathy for their fellow subjects in the remote East, still we do entertain some small hope, that the near approach of the great impending battle for the renewal of the Company's charter may, perchance, kindle some little spark of interest in behalf of this neglected step-child—INDIA. But even if we were without this slender hope, we should nevertheless think it our bounden duty to put on public record, by means of our respectful petitions and

remonstrances to Parliament, this our humble protest against proceedings which we view with alarm, as the commencement of an unlawful, rapacious, novel, and oppressive system of taxation. We protest, moreover, against the *secrecy*, in particular, which has marked this conspiracy against our property, by those to whose delegated rule it is our misfortune to be consigned, without adequate protection against their power, or safeguards against their jealousy of those ancient rights and charters which Calcutta has held from the Crown and Legislature of England *for more than a century*.

The petitioners are well aware of the odium and obloquy they have to encounter in India from the privileged class, who virtually wield the whole powers of Government.

Sufficient indications have already been given of the bitter feelings of anger and alarm with which the haughty and imperious local authorities regard the audacious attempt of the independent inhabitants to question the Company's claim to absolute power over the property of His Majesty's subjects.

It is particularly distasteful to those authorities, that this resistance, in the first instance, should have taken the legal shape of reliance on ancient charters and immunities, and on the protecting power of the King's Court; towards which, and the entire class of lawyers, the Indian Government have always entertained a strong natural jealousy. But most of all, is it an abomination in the sight of the Company's servants, that the temperate, but firm opposition to indefinite and secretly devised spoliation should have assumed the unusual garb of a direct appeal to the British Legislature—a right common to *all* subjects of the King, although but rarely exercised heretofore in this remote and depressed dependency*;

* Two instances of *very strong* and spirited remonstrances (petitions) to Parliament by the inhabitants of Calcutta—one to

a right acknowledged, in words, by the Government itself, but endeavoured to be defeated, on this occasion, by every indirect means in its power. The official organ of Government, its own Gazette, has been taught to stigmatise the petitioners as factious merchants and lawyers, setting themselves up in contumacious opposition to the acts of the authorities here and at home*, while independent newspaper proprietors are ruined by arbitrary suppression, under the disgraceful press-regulation of Messrs. Adam and Macnaughten, for too much warmth in defence of the popular side†. The inhabitants have been forbidden to meet together, and petition for relief—the sheriff has been brow-beaten for calling them together—and nothing but the honest advice of a law

obtain juries in civil cases, the other against Pitt's India Bill—may be seen in the Annual Registers for 1781 and 1785; and Addresses to the Throne have also their precedents; among which may be quoted the case of Hadfield's attempt on the life of Geo. III., and the Loyalty Loan of Mr. Pitt. If it be factious to petition against taxation now, how much more to petition against the renewal of the Charter before 1833? Yet, who have a deeper stake in that question than the English settlers here, and the inhabitants of India who are leased out by the common Superior to these middle-men, the East India Company? But with a fettered press, and meetings forbidden, how are our sentiments to be conveyed to Ministers or Parliament? Who will venture to "*bell the cat*," with exile, ruin, and "high displeasure" in prospect?

* See Government Gazette, published by authority, Calcutta, 24th of May, 1827.

† The Calcutta Chronicle was suddenly suppressed (after a brief existence of four months, during which it never received warning or incurred admonition), on the 31st of May, 1824, for disrespect to Government and the "Court of Directors." The wolf herein sat in judgment on the lamb, who could *easily* discuss this question of alleged invasion of property by Government, and vindicate those who threw themselves on the protection of the King's Court and Parliament, without giving umbrage to the invader. Nothing can well surpass the vulgar-minded insolence of office, displayed in the letters of 31st of May and 1st of June, on this occasion, bearing the notorious signature of Secretary Lushington.

officer is believed to have hindered the obstructing of the meeting, or its dispersion, *by force.*

These are tolerably intelligible manifestations of the spirit in which the Company's Government takes up this taxation question. Those on the spot who are in the secret of the birth, parentage, and *licking into shape* of this crude and greedy abortion of financial skill, can readily account for the disappointment and rage by which the master-spirits, to whom the honours of paternity belong, are goaded on, to avenge the shame of being foiled in a favourite scheme. It is, indeed, a signal reproach to our statesmen and financiers, wise in their own conceit, that they should have known so little of the history, laws, and constitution of their own metropolis, as either to foresee none of the obstacles which were likely to stand in the way of their course, or to expect that these would be overcome as easily as the French king compelled the *registration* of a taxing edict in a *lit-de-justice.*

It is as little creditable to their good sense and humanity, that they did not forbear to exercise their powers of exaction—supposing these to be clear and certain, during a period of great public and private suffering, and so soon after the close of an extravagant and expensive war. But that which reflects the least honour on the discernment and capacity of the well-known personages who devised and fashioned this alarming innovation in our Indian ways and means, is—that they should so egregiously have miscalculated the disposition of the inhabitants of Calcutta and the country at large, as to expect that these would endure the introduction of the "small end of the taxation wedge" without wincing under the operation, and quietly await the heavy mallet of precedent driving it home, whenever these men of estimates and budgets should see fit to wield their vigorous instruments.

Did these gentlemen deceive themselves in this

matter, or knowingly mislead their masters at home, to whom golden dreams of fresh revenue are ever acceptable, and in whose sight those who procure them such visions find ready favour? The probability is, that the Indian financiers were themselves deceived; for they belong to a class trained by education and uninterrupted habits to exercise arbitrary power, and meet no resistance—a class little conversant with English history and politics—with broad philosophical views of human affairs—or, indeed, any views but the little purblind doings of local detail and official life. The precious plan, moreover, was concocted and got up two or three years ago, when things did not wear a very propitious face for the Company and their servants, and for all lovers of despotic power. The last gleams of a liberal and reformatory spirit in the administration, which lingered with the Marquess of Hastings, disappeared with him—his departure giving place to a system of pure *bureau-cratie*, under which the good old vigorous days of Saturnian rule returned with all the force of strong political re-action. The press was, at length, put down effectually, and the giant "*Transmission*" once more walked abroad, wielding his strong arm, while confiscation, imprisonment, and ruin followed in the train. Every manifestation of public opinion was so thoroughly quenched, and the awed multitude showed so much alacrity in praise of each successful ruler at his entry or his exit, that keener observers than our small statesmen might have been lulled into a belief that the hugging of chains was sincere—that the road to men's pockets was as open to them as the disposal of their persons and the guidance of their minds. The event has proved otherwise, and the lesson might be salutary, if history could show that governments ever took experience for a teacher.

With respect to the home authorities, who must

have given at least a *formal* sanction to this new taxing project, something more may be said in their defence. The Directors not unnaturally acquiesced in the recommendation from abroad, and probably without having had any grave *legal* doubts strongly suggested to them. They were flushed, besides, with recent victory, and had just trampled under their feet the contumacious and despoiled BUCKINGHAMS, ARNOTTS, FAIRS, LAMBS, RUMBOLDS, and PALMERS. They might well imagine that the growing spirit of independent thinking in India was laid for ever; otherwise, if they had entertained misgivings as to the success of their claim to tax their loving subjects, they would surely have had recourse for legal advice to the great law officers of the Crown, instead of reposing themselves on the domestic counsels of second-rate constitutional sages*. The Board of Controul, in its turn, might be still more excusable for whatever sanction it gave to the new taxation project, recommended, as that came to their body, from the double authority of the Directors and of the Government abroad—and fortified (doubtless) by the approbation of the Advocate-General in Bengal. Whether those high authorities in England will *now* feel very deeply indebted to the Indian rulers and financiers, who have rashly led them into their present false position, may be doubtful, or more than doubtful: but the Company, at least, can scarcely be very grateful for the large portion of public notice which may chance to be attracted towards them and their measures. They are, naturally, a modest and retiring corporation, and

* Sergeant Bosanquet, one of these, is the same oracle who has the singular honour of differing from the Lord Chancellor and the twelve Judges, on the question of Legal Interest in foreign India; the same whose counsels led the Directors into all the cruelties by which they ruined the firm of Palmer at Hydrabad.

it is not at all in harmony with their interests to court the general gaze at any time least of all, towards the close and anticipated renewal of their long lease, when they can gain but little by increase of revenue, compared with the imminent jeopardy in which their very existence is put by all this mooting of the most delicate questions and ticklish points, touching their administration of justice and revenue, in countries which have been so long left under their all but absolute power. The Board of Controul, indeed, and Ministers, need have no dislike to the fullest exposure of the system; their degree of dislike, at least, will depend a good deal on the extent to which they meditate clipping the wings of the Company before that bird of evil augury takes her next flight; if they mean to leave things nearly as they are, the less said about existing abuses the better, and *vice versa*. They have unfortunately one particular interest to serve, sinister in its relation to the petitioners against taxation. It is plain, that the higher they can swell the gross amount of Indian revenue by the time the charter expires, and while the odium of exaction rests ostensibly with the Company, in so much better condition will they stand if the nation is to resume this great plantation encumbered with its actual debts*. The higher, too, that the nett value of the estate stands, the better the

* Its debts, after all that has been written and said of them, are not more than about equal to two years' gross revenue; and if the interest is kept low, they are a great political benefit, as natives in all parts of the country invest large sums in these funds, and have therefore an immediate interest in the continuance and credit of the English Government. By a reference to Rickard's Speeches, Appendix Table, p. 238, it will be seen, upon the undeniable evidence of figures, that the Indian Debt originated, and swelled to its bulk of thirty millions, *solely* from the losing commerce of the Company, and in no respect from any inadequacy of the territorial revenues to cover all and every charge of civil and military administration.

terms that may be insisted on for a total or partial renewal. One conclusion, however, is clearly evolved by this exposition of the *direct* interest of the Company in augmenting their revenues, and the *indirect* interest of the Board of Controul in this increase; namely, that neither of the great bodies in question should be entrusted by Parliament with any general power of indefinite taxation over India: a conclusion, indeed, sufficiently evident on general constitutional principles. Tax payers cannot lawfully be deprived of *all* check over tax gatherers and tax imposers; and if India cannot yet be trusted in her old free cities, with any immediate voice in this vital matter (a thing quite practicable by enlarging the council, or giving a negative to a municipal body chosen from the most opulent grand jurors), the least that Parliament can do, is to reserve the power of the purse exclusively and jealously in its own hands, and to give opportunity for the full and free discussion of every project of finance before a new tax is laid on.

With one thing the petitioners must lay their account—no act of ingenuity will be spared, by the Local Government and its minions, to blacken the remonstrants in all possible ways—their motives will be misconstrued individually—their sayings and doings distorted—the conduct and characters of individuals vilified—and their calm, constitutional, and respectful remonstrances, made to wear the semblance of sedition and conspiracy. All this is in the usual and natural course: and as the most efficient of those calumnies will be got up and put forth in secret dispatches to England, we shall have no opportunity of learning and refuting what is said of us. But this will not be all; the grand, the infallible nostrum in such cases—*alarm about the* "NATIVES"—will be brought into full play, and perhaps with its usual success; for what blinds the understanding

like fear? Which of human passions, in the melancholy pages of history, has produced so much wrong and cruelty, as panic terror?

The most "thinking people" of England will gorge the bait held out by the interested parties, and in all probability will thus be drawn by the nose into approval of violent and unjust measures to put down the dangerous spirit of independence in a second America; and to rally round good order and legitimate authority, endangered, as they will be told, by the seditions of the natives, urged on, of course, by factious demagogues, &c., &c., &c.

Pretences of this kind, even more destitute of truth or probability, succeeded to heart's content in the matter of the Indian press. No one in England knew or cared about facts, or about India; no one sifted the claims to credibility of the interested and prejudiced witnesses—the Munros, Malcolms, Adams, Elphinstones, Edmonstones, Stuarts, Baileys, and the rest of those for whom the existing *system works so well!*

So it will be in this case of taxation. The tocsin of alarm, about "THE NATIVES" having dared to resist a tax, will be rung in the ears of the most thinking people, till they are deafened into belief and timid acquiescence; yet will there not be a shadow of reality in any of the bug-bear stories of this sort, which, as a matter of course, are by this time on their way to England*.

It is not true, that the natives are now, *for the first time*, resisting an impost; they have always resisted exaction, when they considered it unjust or *novel*, under their own princes; sometimes peaceably—often tumultuously—frequently in open arms. They have done the same before now, under our own rule, and often with success; because Government, being in the wrong, had the sense to yield, with or

* Vide Note D., Appendix.

without a good grace, before passive resistance ripened into something more formidable. Exactions, licit and illicit, shop taxes, police taxes, stamp taxes, have been resisted and resented in our provinces, in the shape of organised rebellion in Cuttack, armed revolt in Rohilkund, and repeated tumultuary assemblages at Benares and elsewhere.

Passive resistance, *at this moment*, has rendered the recent provincial Stamp Act of 1824 (the counterpart of our Calcutta Act of 1827) a dead letter! Such things ought to teach our rulers to abstain from pressing their *European* plans of taxation on a people who conceive themselves hardly enough dealt with under their ancient *Oriental* system of land taxes, and our additions of monopolies and customs.

But the repugnance of the native inhabitants of Calcutta to increased and unusual taxation, has assumed quite a different shape, from the sturdy resistance of the provinces on like occasions, namely—that of peaceable and *legal* endeavour to obtain protection against what they consider an invasion of their ancient and legitimate privileges. The generations that have sprung up since the establishment of King's Courts among us, are perfectly well acquainted with their own birthrights as citizens; and, timid and submissive as they are in many things, they have not been unaccustomed to avail themselves of their English privileges, in numerous contests with the Company's Government, on the arena of the King's Court*.

It is too late in the day *now* to endeavour to

* The records of the Supreme Court in Bengal *abound* in cases of determined, and often successful struggles on the part of the natives, in resistance to wrongs committed by Government. There are many cases, to be found even in the chief provincial courts. At Bombay, in the King's Court, a respectable native rice contractor has recently defeated the Company in a contest which their long purse enabled them to protract, most oppressively and unjustly, for about twenty years of pitiful litigation!

deprive them of those rights. Our very fears ought to make us rejoice, that the peaceable channels of law and petitioning are provided, like so many safety valves, for giving vent to feelings that, without such conduits, might become explosive and terrible. In the present case, so far from the European and Creole population having excited or fomented the spirit of opposition, it is undeniably true, that this resistance to fresh taxation was determined on among themselves by the native capitalists of Calcutta, between whom and the European inhabitants an unusual spirit of dissatisfaction and even animosity existed at the moment, in consequence of some late occurrences, originating in our defective *double* system of laws, as operating in cases of bankruptcy. It was even in agitation among the natives, altogether without the knowledge or privity of the other classes, to shut up their banks, and shops, and houses, and to withdraw from the city until the obnoxious tax should be withdrawn—a mode they had practised with *success* in the great provincial towns more than once.

The interruption to all business, the confusion, the distress which this measure, so consonant to native usages, would have caused in this vast commercial and monied metropolis, may not be appreciated by great men in office, whose lofty positions place them *above* confidential intercourse with the natives; but the European and other inhabitants, engaged in business, are well able to judge of the alarming effects which might have followed this resentful secession, at a time when confidence between the two classes was impaired, money scarce, and commerce languishing. By suffering the native capitalists to follow in their train, the European and Creole inhabitants were, in reality, of the greatest public service, and diverted the former from their own irregular and embarrassing purposes of resistance into the channel of our more formal and sober methods, by which they were taught (through our

hopes and our example), that redress might ultimately be obtained from the sovereign authority in England.

After all, we ask—Is it so great an *evil* that there should be a limit to the financial means of any Government? Is it not, on the contrary, one of the greatest possible encouragements to prodigal expenditure—to rash and ruinous wars—to ambitious and meddling policy—to domestic jobbing*, that the Government of India, stimulated to aggrandizement by its unnatural and difficult position, by the vanity of individuals, and the remoteness from home controul, should have the power, whenever it pleases, to put its hand in every man's pocket? Yet the startling position taken up by our Government, in Secretary Prinsep's letter, goes the whole length of this doctrine: *his* doctrine is, "the state wants, therefore the state must have; nor will it suffer the *contribuables* to ask any account of what it has done with the old revenues, or what it means to do with the new—*stet pro ratione voluntas!*" How such maxims of Government will sound in the ears of modern Parliaments and of Englishmen in the present day, we know not; but we do know how they would be felt and resented, if applied to the purses of men at home: applied to India, indeed,

* Searching questions, such as these, may not be asked in India, through the press, but under peril of further confiscations of newspaper property, or of deportation to the imprudent *questioners*, who are therefore obliged to furnish materials in MS. (under many disadvantages) to the press in England, to be wrought out there in the shape of appeals such as this. Granting that the Company's servants in India have a separate interest in preventing any opinions on public events being published here and sent home, to contradict their own partial *official* reports to their masters, does it not pass credibility, that those same masters, who have a *directly opposite interest* in hearing both sides of every question, should have been persuaded to *join* with their distant servants in suppressing all such information through its only possible channel—*the Press?*

they may pass current, because they touch not those who are to decide this great taxing question, which has at length been put in issue between the sovereign merchants of the East and their ill-fated subjects. Parliament has often enough solemnly pronounced its interdict against "schemes of conquest in India," and as often complained that its denunciations were waste paper. The Company, too, is incessant and vehement in its complaints against the lavish expenditure of its servants abroad; its clamours to reduce charges within the limit of revenues which, *till now*, have always been recognised as of a fixed nature, are renewed in every dispatch. If, by super-addition of the European system of taxation upon the ancient heavy burdens of the Asiatic revenue system, a method may be found of raising the public means to the level of *alleged* wants, the Governments abroad are conveniently relieved from any necessity of squaring down the expenditure to the standard of fixed revenue; and their compliance with their masters' injunctions to economise, would be purely pernicious, as the savings or "*surplus*" would be so much *tribute* greedily seized by the mother country, instead of being expended on the spot. But, if Parliament sincerely wishes to restrain prodigality and conquest, its surest, its only effectual instrument of check, is to set bounds to the Indian budget, and inexorably to tie up the rapacious and ever-craving hands of rulers abroad.

By two opposite processes, a state may add to its pecuniary resources: one, by addition to public burdens, the most direct method, certainly, and that most dear to financiers all over the world; the other, by retrenchment and economy, which leads to the corollary of improving the resources in existence by good management, and by *bettering the condition* and *capabilities of the taxees*. If the Court of Directors are so much in want of additional resources, as we are assured, to meet inordinate charges abroad,

they are not without considerable available means for this purpose, if they could only be persuaded to pursue steadily the *inverse* method above mentioned, of cutting boldly and deeply; and this without any need for miserable retrenchments from servants abroad, who, generally speaking, are not over paid.

Without going into minute details of these available sources of saving, a few of the most prominent* may be readily indicated.

One of the most palpable and available, perhaps, is the insular Government of Penang. Its three petty establishments, Prince of Wales's Island, Malacca, and Singapore, might each be *well* administered, as heretofore, by a Company's resident and his assistant, with two or three hundred troops, and with a *King's* recorder, to protect the settlers from oppression. Instead of this simple and cheap Government—under which Singapore especially has risen, since yesterday, from an unknown desert speck to its present wonderful condition—nothing less would serve the magnificent ideas of the sovereign merchants than to erect a grand and stately fabric of governor, secretaries, councillors, &c., ambulatory and stationary, with the usual appendages of inferior functionaries and expensive marine establishments for pompous and *pernicious* periodical visitations. Instead of seven companies of sepoy troops, the new Government has thought its dignity required four times that number, and of course a complete machinery of staff, &c., &c.

* We refrain, in particular, from any analysis of "home territorial," or expenditure *in England* on account of India; many of these relating to recruiting, stores, pay and pensions, transport service, and *perhaps* clothing, are unavoidable and proper. But the subject is, in many *other* points, ticklish and tender, and had better not be stirred, lest some one ask whether it is not an *intolerable hardship* on India to pay for *triple* government, *i. e.* a local government (at each of four presidencies), a government in Leadenhall Street, most costly! and a third government by the Board of Controul.—See the Westminster Review, No. viii.

With difficulty has Singapore escaped the destructive gripe of the governor and council, who would fain have inflicted on that free port and flourishing emporium the harassing system of customs in force at the jealous elder establishment of Prince of Wales's Island. But, as if to show how deeply rooted in some minds is the love of small formalities, and the attachment to the beautiful externals of revenue, even when the homely substance is taken away, this paltry Government keeps up the vexations and harassments and trumpery of custom-house *forms* (ill understood, and less relished by the Chinese, Malay, and Buggese nations, on whom those settlements mainly depend), although not permitted to exact actual *payment* of duties and dues.

Singapore until now more than supported its own cheap establishment; and the principal settlers, enjoying a freedom and consideration unknown any where else under the Company's flag, aided the resident with their voluntary services in the task of administration. Of course, all this is now exchanged for the *hauteur* of a *regular* government—censorship on printing*, inquisition into titles, and licences to reside—menaces of transmission—and all the other blessings of the Company's own system. But whence come the resources that are to meet the doubled or trebled charges of all this insular grandeur? From Bengal, of course; and to meet this, and other new calls, *new taxes must be laid on India.* The remedy for so much wanton folly is plain. Throw overboard

* On the *continent* of India, the *cant* used to frighten the timid and ignorant at home, is that a free press might embroil us with the "native" princes, and our vast "native" army. We marvel how Governor Fullarton considers this to apply in his INSULAR government,—where the "native" powers lie that are to be excited against us;—how the few companies of Hindosthanee and Coromandel sepoys, foreigners like ourselves among the Ultra-Gangetic traffickers of Singapore, for instance, are to be deluded by *English* journals, or *any* printing, into making common cause against the British government?

the Honourable the Governor, and his Honourable Council, and his high and mighty functionaries and his army. Put down utterly all their absurd pretensions to a political character in the Archipelago, and the little thriving commercial settlements, *if let alone*, will cost nothing; Bengal will then save many yearly thousands, and there will be the less need to vex *her* industry with fresh taxes.

Another source of infinite saving might be found in the abolition of the Company's ridiculous and extravagant commercial machinery on the Continent of India: let them cease the wasteful and pestilent farce of manufacturing, trading, and shipping on their own account; the country will be all the better for this reform, and they none the worse, but indeed very great gainers.

Every child in these days knows that all such matters are best left to private capital and industry; and none should know better than the Company (if they ever strike a fair balance of profit and loss on their transactions), that great establishments and "factories," with commercial residents and assistants, and doctors, and scores of underlings, though superintended by government secretaries, and boards with their secretaries, and warehouse-keepers, and all the rest, are not conducive to mercantile or manufacturing profit. When the Company require remittances to England in return for stores, or to replace the advances significantly denominated "home political charges," they would do well either to go into the market like any other purchaser, whether to freight ships, buy goods, remit bullion, or purchase bills, precisely as individuals do who have nothing to attend to but their own interests.

Every other description of trafficking by a Government is an unmixed evil to the governed, and a losing concern, in the long run, to itself. The Company do actually follow this method in their yearly purchases of indigo; and gain by it, saddled as the remittances

are, by proportions of the charges of their establishments.

The immediate expenses that might be saved by the suppression of some two dozen commercial residency "factories," to say nothing of multiplied secretaries and boards, and leaving out of the question the saving of many great men's time and labour, now wasted on such foolish matters, would amount to many lacks of rupees—to the whole of the expected nett receipts from stamps twice told.

The monopoly system of direct agencies for salt and opium might be most profitably exchanged for an excise or a farming system. The country, at any rate, could not but gain in freedom and resources by the extinction of all factories or manufactories which are carried on on account of Government*.

Vain would be the expectation that the Company will willingly consent to any such sweeping economy as that which is here suggested. To their worthless commerce they have always clung with peculiar attachment, as doating mothers are said to be fondest of their most deformed and ricketty offspring. Even dearer to them is their ruinous shipping system—the source of so much influence in the proprietary body and "the city." As to their establishment at Penang, it is their own peculiar pet and hobby-horse—their beautiful ideal of what a real orthodox "Honourable Company's" government ought to be. It stands especially endeared to them by a patronising, protecting intercourse of twenty-two years; yet even to this sorrowful retrenching must they come at last, and that in two or three brief suns; and if they

* Where should we have looked for the astonishing indigo produce of Bengal, that is now the source of so much public and private wealth, if this branch of industry had been carried on by the Company instead of being left to individual enterprise? What but the paralysing and monopolising influence of the Company prevents Bengal from being, as Nature has intended it to be, the first *silk* country in the world?

will *now* prematurely force such ungracious topics on public attention; they have themselves and their servants abroad to thank, who have unwisely stimulated discussion by their rapacious and unblushing assumption of a right to unlimited powers of taxation over the King's subjects.

The influence of the East India Company is enormous, and all pervading from the vast extent of their patronage at home and abroad. There is scarcely a respectable family in the three kingdoms into which *some* of the ramifications of this overwhelming sinister influence have not, directly or indirectly, insinuated themselves. Within the focus of the city of London, where their power is peculiarly concentrated, it operates with undivided force, even to a degree which neutralises, in a great measure, those wholesome combinations, and that natural hostility, which, under other circumstances, would unite the statesman, the capitalist, the merchant, the manufacturer, and ship-owner, in one common endeavour to put down the last remnant of chartered monopoly, and to wring from the Company, in these days of domestic languor and distress, the right of free resort and free settlement in regions which now form a component portion of the British empire, and which unfettered skill, industry, and capital would speedily convert into an inexhaustible source of production, and a market of boundless extent. From Liverpool, Manchester, Glasgow, Bristol, Greenock, Birmingham, Sheffield, Hull, Leeds, and other provincial towns, there may be better hope for us than from the metropolis. The spirited inhabitants of those great emporia of trade and manufactures—in particular of LIVERPOOL, the rival of London itself—will perhaps think it a task not unworthy of their most serious efforts, to nip, in the first bud, a system of new, secret, and boundless Indian taxation, which, in skilful and not unwilling hands, *may* be brought to bear so heavily in numberless indirect and ingenious shapes, on all

who traffic to our eastern ports, as *virtually to defeat the intended boon of the* FREE TRADE—protected though it be from direct imposts. Grudgingly and tardily was that boon conferred at the last renewal of the East India Company's charter in 1813; and to the CITIZENS OF LIVERPOOL, more than to any other body of men, England is indebted for obtaining it. Headed by their liberal and talented representative, they will keep watch and ward over it, and take heed that the prize which their exertions won be not rendered valueless by fiscal artifice or political violence.

NOTES.

NOTE A.—*Page* 31.

One great and honest statesman, Lord Cornwallis, had the sagacity to see that a system of revenue under which the Indian Government, as sole landholder, absorbed the whole rental of the country, however profitable at the moment, was fatal to accumulation and consequent improvement, and bound down the country to a perpetual stationary condition. Looking beyond his own day, he anticipated the coming time when, he hoped, the land rent would cease to be the sole source of revenue, and the exigences of the State might be supplied, as in European systems of finance, by contributions indirectly drawn from multitudinous sources of public wealth. The first step in this process was to limit the future claims of the Company on increasing rental; and this virtuous man, supported fortunately at home by his name and his political connexions, passed a self-denying ordinance, abjuring for ever any participation in future land rent beyond a fixed annual composition or quit rent, equal in amount to the nine-tenths of the nett rent which was actually received in 1790 by the Company; one-tenth being reserved for the landholder (or zemindar), who was besides to profit by all increase which his capital or industry might thereafter draw from the soil.

The nett rent was at that time very nearly equal to half of the gross produce—and the remaining half of this (gross) went to the cost of production, including the maintenance of the ryot, who is in point of fact a *metayer* labourer all over the East, as in some of the least advanced parts of Europe, cultivating on half produce, destitute of capital, and more or less depending on advances, whether of stock, implements, and seed, or of money to buy them, at most inordinate interest*. Much fault has been found with this celebrated measure—Munro (Sir T.), Malcolm, and generally the partisans † of the Company, and of the *oriental*

* See the system detailed in Colebrooke, and in "Colonial Policy applied to India," and Westminster Review, No. viii. Also in Oriental Herald, Sismondi, and Rev. Encyclop. Dec. 1825.

† Elphinstone, Thackeray, Macleod, Wilks, and we fear Mr. Mill.

revenue system, regret the relinquishment of present power over production, for "visionary and theoretical" future benefits. Others, as well as they, think that the real property (property!) was not in the zemindars, who were mere hereditary collectors and *syphons* of rent, but in the poverty-stricken ryot. Others lament the rigour with which the perpetual quit-rent was exacted from the zemindar, by confiscation or default, and which necessarily led to clothing *him* with analagous summary power over his tenantry; and some benevolent but mistaken writers (Sismondi and others) think that Lord C. should have gone to work *inversely*, and, while restraining the demands of the State, have depressed the zemindars, *who alone possessed the scanty germs of capital*, while he elevated the ryot, described by Colebrooke as "worse off with his right to cultivate on half produce than a hired labourer," to the condition of a real landholder.

The first of these objections scarcely deserves the notice of any man of extended, impartial, or philanthropic views; but the writings of the Company's partisans, and the conduct of their most favourite administrations in India, show how tenaciously the lessees of a distant and prostrate country will cling to immediate instead of remote good. To the other objections, perhaps the best and all-sufficient answer may be, that it was difficult to attain the great, good, and noble objects desired by Lord Cornwallis, but through a choice of evils. So long as the State absorbed half the gross produce, or the entire fund of rent and accumulation, no improvement of general condition—no augmentation of wealth—no increase of production could have taken place, but by very slow and imperceptible degrees. The oriental system must have been perpetuated, dividing society into two great interests, namely—the *one* sovereign landowner and the *many* impoverished producers and collectors. But the Government demand being once *fixed*, and at a time when large tracts of land were uncultivated, lightly assessed, or not assessed at all—whether was it best for the whole community to leave the *capabilities* and chance of improvement in the hands of the miserable and poverty-stricken metayers, or to sacrifice their equivocal and barren rights, and create a real and profitable individual interest in the soil by an approximation to the condition of independent landholders in the persons of the zemindars? This was the only class who possessed a vestige of capital or means; and their places, if they did not or could not increase production and pay their quit rents, were sure to be beneficially filled by capitalists sprung from the trade and manufactures of the great cities, whom the respectability and anticipated profits of holding estates would attract to the confiscated zemindaries. Such has been, in fact, the real result of this celebrated measure of Lord Cornwallis; it has produced the greatest benefit to the districts in which it has been allowed to prevail—of which the best proof that can be given is the fact

(verified by daily sales), that in many places the zemindar's share of the nett rent, which was one-tenth of that reserved for Government thirty-five years ago, is now one-fourth, one-third, or even *more*. This difference has been, doubtless, in a great degree hastened by the fertilising effects of British capital and skill *radiating* from Calcutta, particularly in the shape of the indigo staple, which, requiring the best qualities of soil, and giving employment to an increased number of hands, has called into cultivation with extraordinary rapidity inferior soils, and so increased the general rental of the country, in the improvement of which the landholders at fixed quit-rents have the most direct and stimulating interest. But it is not to be doubted that the beneficent Lord Cornwallis did anticipate precisely such effects, though not perhaps in the shape, nor with the acceleration which they have assumed. This augmentation, however, of the portion of nett produce now gathered by the zemindars has been the cause of incessant and envious hankerings, in the Company and its servants, after a gain which they suppose would have existed in the same degree, and have become available to the public coffers but for the permanent settlement of Lord Cornwallis, to which their hostility is accordingly loud and incessant. One evil consequence has arisen from this prosperity and this thirst for revenue: it has given rise to all the abominations and extortions, and *suicidal* practices of the Madras (Munro) ryotwaree system—to the greedy hunting out, even in Bengal, for every acre of land which, by fraud or negligence, had escaped assessment at the time of Lord Cornwallis's settlement; as if prescription ought not, by this time, to be a *quietus* to the existing generation of landowners; and as if a truly benevolent Government, with statesman-like views, and having any sympathies or identity of interests with the *governed*, ought not to rejoice rather than grieve that any portion of the land had originally escaped the mortal infliction of a nine-tenths' exaction. But the feeling here spoken of has done more evil than even all this. The settlement of Lord Cornwallis only extended to the provinces (as far as Benares) then under our sway. Since his time, conquests and cessions have made us masters of large tracts to the South (Cuttack), and vast provinces in the North and West (up to Hurdwar), and to the West of the Jumna. To no one of all these has the permanent settlement been extended, notwithstanding (twice or thrice) repeated proclamations and pledges in writing and in print; notwithstanding the reiterated protests and reclamations of some of the most able and upright individual servants of the Company, at the head of whom it may be sufficient to mention the name of Colebrooke.

NOTE B.—*Page 37.*

To show how feeble, after all, is the real force of the judicial or legislative *veto*, one memorable instance will suffice, as proving how much may be done by a designing Government towards weakening its effect; due advantage being taken of times and seasons, and the characters of the judges. The press, in the great cities of Calcutta, Madras, and Bombay, was in all time *legally* free, because English law alone prevailed there. Yet the press was *really* fettered, through the intimidation wielded by governors, who have the power of shipping off, and so of utterly ruining in one hour, any British-born subject, without reason assigned—subject, indeed, to the mockery of parliamentary responsibility. But when Creoles and non-British-born men began to acquire knowledge and property, to edit journals and write critiques, there was no method of getting rid of *them*, nor any of putting them down, except by the regular processes of the English libel law, pretty severe in itself, and always ruinous *in its costs**, in a country where law is thrice as dear as in England. Governments, however, have an instinctive aversion to the publicity, the canvassings, and the scandal of judicial process, where more silent methods may serve their purposes; yet no governor in India, till a Company's servant (ADAM) by chance filled that post, during a brief vacancy, in 1823, ventured to insult the King's judges, by asking them to approve and register, as "not repugnant to the laws of England," an Act for summary forfeitures, and licences of printing presses, at the will of Government, without trial or cause shown. An unlooked-for accident, however, placed the whole powers of the Supreme Court in the hands of a single Puisné judge (MACNAUGHTEN), and he readily met the wishes of his *temporary contemporary* in the Government. Between them they got up and registered the desired edict. It was confirmed joyfully by the Directors and Board of Controul, and sanctioned on appeal by a Privy Council, composed in a great measure of members sitting judicially, who had previously approved it in their ministerial capacities†: it is now declared English law *in Calcutta*. The

* Sir John Malcolm, in the *Politic* second edition of his Political History, Vol. II. p. 293, gives, with all the *sang-froid* of a governor about to be, the receipt for ruining a refractory journalist, by the mere costs of repeated prosecutions, as practised successfully in India before governors were armed with the power of deportation.

† In the Bengal Chronicle of December 1826, which had sentence of suppression passed on it for publishing a list of the members present in this memorable council, are enumerated four members of the Board of Controul, three Cabinet Ministers, including the Chancellor's Deputy, Lord Stowell, three Chiefs of the Common Law Courts, a civilian, and an Ex-Chief Justice of Bengal.

Directors and Board of Controul, backed by such high authority, forthwith enjoined their governors at Madras and Bombay to get similar edicts of "*judge-made law*" passed by their respective courts. The Governor of Bombay (ELPHINSTONE) tried, but was met by a signal and disgraceful repulse; two of the three judges denying that even the authority of the Privy Council could make an edict "repugnant (as this was) to the laws of England;" and the third assenting to the entire illegality and wantonness of the measure, and only voting for the registry because he thought himself judicially bound by that authority. At Madras, the more cautious Governor (MUNRO) first sounded indirectly, and refrained from exposing himself and his employers to the mortification of a public defeat, when he found that the judges on that bench were not likely to consent to the registry of the edict, if presented formally. Under this whimsical anomaly, the fruit of mere accident, the press is fettered, "by English law," in the great metropolis of Calcutta, and is free, "by English law," in the minor settlements of Madras and Bombay! Where are we to seek for the *true* "English law," under such circumstances? Apparently in the passions, tempers, and intrigues of judges and governors!

Yet even this curious history, and the circumstances under which a partial inroad was effected on law and on the ancient rights of the inhabitants, sufficiently show that the *veto* of the King's Court is some check on the Government, and may be of substantial value in the hands of courageous and independent judges. We cling to it, therefore, with a pertinacity only equalled by the anxiety of the Company's servants to break it down or sap its efficacy.

NOTE C.—*Page* 60.

To those who gravely discourse to us of a colonial pro-consul's after-responsibility to courts, privy councils, or Lords and Commons, we may be permitted to answer with a smile; or, if that be indecorous, we may simply remind them, that not merely the ordinary charges of English law, but triple costs, are inflicted on the plaintiff who shall fail in his action; and that, considering the power of the adversary, and the distance of time and place, it is next to impossible a complainant should *not* fail in procuring evidence of *legal malice*, such as alone will satisfy the technical scruples of King's Bench Judges. As to the Privy Council, or Parliamentary Committees, a majority of the members on any occasion will *usually* consist of the very functionaries who have

already sanctioned the wrong in their executive capacities*. As for Parliament itself, with due reverence be it spoken, when may poor and helpless individuals hope for justice from that illustrious body against the powerful India Company, or a noble governor? Too true it is, that, ever since the creation of a Ministerial Board of Controul, there is no longer the disposition to scrutinise the oppressions of the Company or their servants: with every act of these the President of the Board of Controul naturally identifies himself, and Ministers with *him*, and the majority of Parliament with *them*.

There is, in truth, no check on the abuse of this monstrous power of transportation, but the temper and personal gentleness, occasionally, of a governor, with some apprehensiveness of public opinion in England, when fortunately the governor happens to be a nobleman, having an *English* reputation at stake, and habituated to pay some deference to the feelings of his countrymen. As to Company's servants, who have spent their lives in India, and to whom notoriety, even for abuse of power, is often the only chance they have of being known in England at all, they are but too ready to exercise this atrocious violence, whenever power falls into their hands and opportunity serves. We have seen one of them wield it to intimidate refractory jurors or magistrates†, and another employ it to consummate the ruin of a mercantile house which had the misfortune to incur "high displeasure‡." In truth, it is an engine of power too monstrous to be entrusted in the hands of any man, or any set of men;—it is applicable to every illegal or odious purpose;—it may serve to dispose of a troublesome litigant, who presumes to question civil matters in the King's Court with Government or the Company's servants§; and it is as useful to punish those whom law would not castigate¶, as to get quietly rid of those whom law might visit too severely||;—it has been known to stand in the place of a society for the suppression of vice—to exert its virtuous indignation against the frailties of females in humble life, or to frown on the illicit importation of a "stage player**." It is but the other day we have seen

* Case of BUCKINGHAM. Appeal to King in Council, 1825; and twice to the House of Commons, 1824-26.

† Case of PARRY, at Madras, 1809-10.—BARLOW, Governor.

‡ Case of LAMB and RUMBOLD, 1823. Hyderabad papers, William Palmer and Co.—ADAM, Governor-General; METCALFE, Resident.

§ Proceedings at Madras, 1809-10—Carnatic debts.—BARLOW, Governor; STRANGE, Chief-Justice.

¶ Case of the two brothers, BETTS, indigo planters, deported for a breach of the peace, which the law would have visited with fine or imprisonment in a Creole or Native; 1824, Bengal.—Lord AMHERST, Governor-General.

‖ Cases of LINDSAY for Swindling, and of the three PEDERASTS, Bengal, 1820-21.—Lord HASTINGS, Governor-General. Cases of REVELY and of HALIBURTON, the Sheriff of Prince of Wales's Island, both private merchants, 1827.—FULLARTON, Governor.

** Case of LEE LEWIS, Bengal, 1791.

intimidation in this shape brought into play against the abhorred free trade, by the most absurd and extravagant petty government in all the world—that of Penang; which, among numberless other vexations, has chosen to commence questioning the *titles* to residence of the enterprising adventurers from Liverpool and London who have raised out of nothing that new and flourishing seat of commerce, Singapore.

The mischiefs of this detestable power of summary banishment are not to be measured by its completed and published acts only, but by its terrors, its open menaces*, or well-understood *hints*. It is as corrupting to those who employ it as degrading to the unhappy victims against whom it is directed. It stands naked and alone in the place of all law†, supersedes all necessity of good government, and is the consolation and refuge of all evil judges or inept or culpable administrators;—it silences honest opinion, puts down independent criticism, intercepts useful information, quiets the vehemence of defence, and gags the clamours of complaint. The hackneyed grounds on which it is pretended to be justified are all of them contemptible and unreal, existing only in the terrified imaginations of the weak, or the devices and desires of the wicked; for he is wicked who loves power over his fellows for power's sake: and, disguise it how we will, love of power, and nothing else, is the true object for which the Company and its servants cling so tenaciously to this precious remnant of exploded monopoly. Sooner or later, the odious power, however, *must* be given up, or *will* be wrung from them by the roused spirit of England: until that consummation shall take effect, it is frivolous to talk, and fruitless to hope for really good government or for substantial improvement in India.

NOTE D.—*Page* 81.

The question of the press in India has nothing to do with politics. Not only is the mass of the population indefinitely remote, in civilization, from the period when men begin to comprehend or to think of such things, but it is a population (however gravely interested Governors, in *esse* and *posse*, and Councillors and Directors may profess a different opinion) destitute of the very elements of political acting and thinking—without any proportion of master spirits—of educated, opulent, idle, reflecting men. It is a population incapable of cohesion or

* Cases of BUCKINGHAM, Bombay, 1816—NEPEAN, Governor; of SERAMPORE MISSIONARIES, Bengal, 1808.—Lord Minto, Governor-General.

† Cases of WILLIAMSON, Bengal, 1796—SHORE, Governor-General; of LEETHART, Bengal, 1809.—Lord MINTO, Governor-General.

combination, from being split into so many divisions of country and origin—of caste, tribe, religion and sect, laws and customs; without unity of national feeling—habituated to the yoke of grinding despotism from the earliest ages—steeped in almost universal poverty.

To twaddle about such a heterogeneous mass being worked on by English demagogues, through the press, is to insult the understanding and belie the experience of mankind; and two of the staunchest and ablest advocates* of the Company's despotism have broadly admitted, that the natives of India can and do take no interest in political discussions—that the main object sought by the press licencers is to silence the irksome comments of their own countrymen in India. The only shape in which freedom of printing in this country can yet be materially useful, and the only purposes to which the rational friends of improvement have desired to apply it, are of a practical, not political character. The poorest native, as well as the wealthiest European, has a direct interest in restraining the abuses of local and provincial authority; and by the salutary dread of publicity alone can that first object of all good government be attained in a vast region like India, where power over person and property is delegated to an immense and scattered body of functionaries, linked together by a common interest, and over whom the chief rulers, however willing, cannot, in the nature of things, exercise any minute or efficient controul. All *other* checks on oppression are worthless delusions, where the miserable peasant is chained down to the soil by hopeless poverty, deterred by fear of future vengeance, and intimidated by his sense of immeasurable inferiority of rank, wealth, influence, and even complexion. A person so circumstanced is virtually shut out from availing himself of the formal, tedious, and costly official gradation of checks, provided by the *benevolent* intentions of a Government which has not the means, if it had the wish, of bringing justice to every man's door.

NOTE E.—*Page* 68.

The curious reader is referred, for information on Indian subjects, to the following, among many able works, namely—to Colonial Policy, 1823; to the second edition of Mill; to the amusingly contrasted first and second editions of Malcolm; to that Author's and Elphinstone's Reports of Central and Western India; to Colonel Stewart's, Mr. Tucker's, and Mr. Law's recent

* Governors ADAM and ELPHINSTONE, of Bengal and Bombay.—See *Oriental Herald* for December, 1824.

Pamphlets; to the Oriental Herald, generally; to the Judicial and Revenue Selections at the India House; to Leith's Pamphlet, 1820, on the Judicial System of India; to two Letters to Sir Charles Forbes, 1824; to some able papers in Blackwood's Magazine, 1825; to the Westminster Review, 1825; to an article in the Edinburgh Review, 1824; to articles (also in praise of Sir John Malcolm) in the Quarterly Review and Monthly Magazine, and in the British Critic and Blackwood's Magazine, 1826; to Mr. Ellis's (civil servant) late Pamphlet; and, in particular, to a very curious Letter to Lord Liverpool, with copious Strictures on Indian Jurisprudence, by a most competent witness, Sir E. H. East, Chief-Justice in Bengal from 1813 till 1821.

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APPENDIX.

No. I.

Extracts from Regulation XII. A. D. 1826. (Bengal.)

A Regulation for raising and levying Stamp Duties within the Town of Calcutta.—Passed by the Vice-President in Council, on the 14th December, 1826, corresponding with the 30th Aughun 1233 Bengal Era; the 30th Aughun 1234 Fusly; the 1st Poose 1234 Willaity; the 15th Aughun 1883 Sumbut; and the 13th Jumadee-ul-uwal 1242 Higeree.

Preamble. WHEREAS Stamp Duties have *long* been raised, levied, and paid within the provinces* subordinate to this Presidency, and whereas it appears expedient, with a view to the improvement of the revenue derived from the said duties, and *is otherwise just and proper*, that a similar tax should be levied and paid *within the town of Calcutta*, the Vice-President in Council, under the powers vested in him by virtue of the 98th and 99th sections of the Act 53 Geo. III. cap. clv., and with the sanction of the Court of Directors of the United Company of Merchants of England trading to the East Indies, and with the approbation of the Board of Commissioners for the Affairs of India, has enacted the following rules, to be in force within the said town of Calcutta, from and after the 1st day of May next ensuing.

Stamp duties to be levied and paid within the city of Calcutta.

II.—A Stamp Duty shall be levied, raised, and paid within the precincts of the city of Calcutta, upon the deeds, instruments, and writings, and according to the rates specified in the schedule annexed to this regulation, from and after the date specified in the preamble of this regulation; and no instrument, deed, or writing, of the descriptions specified in the said schedule (saving, of course, what may be therein declared to be exempted), shall be written or printed on any vellum, parchment, paper, tarleaf, or other material applicable to such purpose, except the

* The Stamp Regulation in the provinces is, in fact, a dead letter, as far as regards bills, receipts, &c., from the passive but obstinate resistance of the *shroffs*, or native bankers.

same shall have been duly stamped according to the rules of this regulation.

The collection of the duty to be under the controul of the Board of Revenue, or other Commission appointed by Government.

III.—The duty hereby directed to be levied, raised, and paid in Calcutta, shall be under the care and management of the Board of Revenue at the Presidency, or of such other commissioner or commissioners as the Governor-General in Council may, from time to time, appoint; and on notice of such appointment being given, in the Government Gazette, the commissioner or commissioners shall possess and exercise all the powers and authorities relative to stamps vested in the Board of Revenue by this or any other regulation which may hereafter be enacted.

Venders and distributors of stamps—how to be appointed.

VI. *Third.*—It shall be the special duty of the collector of stamps to select proper persons resident in different parts of the town, for the purpose of vending and distributing stamps on the part of Government. The appointment and removal of such venders shall be ordinarily made, at his recommendation, by the authority of the Board of Revenue. Provided, however, that nothing herein contained shall be construed to preclude the Board of Revenue, or the Governor-General in Council, from causing licences to be granted, without any recommendation from the collector, whenever they shall see fit to issue to him directions to that effect, under the general powers exercised by the Board and by Government over all subordinate officers employed in the management or collection of the public Revenue.

Rules for venders and distributors.

IX. *First.*—The following rules are enacted for the controul and superintendence of the venders and distributors authorised to be appointed by Section VI. of this regulation.

Venders and distributors to give security for the due discharge of their duty.

Second.—Every person who may be appointed to be a vender or distributor of stamps, on the part of Government, shall attend the Board in person, and execute *a bond*, with *one or more responsible sureties*, for the faithful performance of the several duties prescribed for such venders and distributors in this or any future regulations, with such penalty, and after such form, as may be required by the said Board; and any failure in fulfilling the conditions of such bond shall, besides the penalty thereby provided, subject the offender to immediate dismission from the said office of vender or distributor by the Board of Revenue.

Rules to be observed by them.

Third.—The following rules shall be observed by all venders and distributors of stamps; and the bonds executed by those persons, on their appointment, shall distinctly bind them to a strict

observance of those rules; subject, in case of failure, to the several penalties hereinafter specified. Provided, however, that it shall also be competent *to the Board of Revenue*, to require the venders and distributors of stamps to come under *such further engagements* as may appear necessary, and as may be legally required from them.

Board may require further engagements.

Fifth.—All persons, as aforesaid, *shall keep such accounts* of the paper received and delivered by them *as the Board of Revenue may direct*, and shall furnish the collector with such copies or extracts of those accounts, and at such periods as he may from time to time require. The said persons shall regularly pay to the collector all money or monies received by them on the sale of stamps entrusted to them on the account of Government, at such periods as the said officer may appoint, and shall likewise at all times, when required, permit the collector, or other person duly authorised by him, to inspect the accounts kept by them, and to examine the store of stamped paper, or the like, which they may have in their possession.

Accounts to be kept by venders, and produced to collector when required.

Money received by venders to be regularly accounted for.

Accounts and stamps to be produced for inspection when required.

Sixth.—Any vender or distributor failing to produce before the collector of the stamp duty any of the accounts required by the Board of Revenue to be kept by him, after requisition made in writing by that officer, and failing to account for such omission to the satisfaction of the Board of Revenue, or other authority exercising the powers of that Board, *shall forfeit the sum of fifty rupees*, and *shall further pay* SUCH *daily fine for every day beyond the date fixed in such requisition for the production thereof*, until the day when the accounts may be produced, AS *the Board of Revenue may direct.* Any vender or distributor refusing to permit the collector of stamps, or other person duly authorised by a writing, under the seal and signature of that officer, to inspect the said accounts, and examine the store of stamped paper, at the time in the custody of such vender or distributor, immediately upon demand, shall forfeit for every such refusal the sum of one hundred Sicca rupees, and shall further be subject to SUCH DAILY FINE *until he complies with the collector's requisition*, AS *the Board of Revenue may direct.*

Penalty for Breach of above rules.

Power granted to levy an unlimited fine!!!

Eighth.—Any vender or distributor who may, without authority, permission, or direction in writing from the collector, or Board of Revenue, sell, give out, or deliver stamped

Penalty for delivery of stamps without receipt of full duty.

paper, vellum, parchment, or the like, without having received the entire amount of duty denominated by the stamp affixed thereto, shall forfeit, for each and every piece of paper, or other material aforesaid, so given out or delivered by him, the sum of *fifty rupees, besides being held responsible for the amount* which should have been taken in case of its not being afterwards recovered. Any person taking or receiving stamped paper from any such vender, without having paid the entire amount of duty as aforesaid, shall forfeit the like sum of fifty rupees for each and every piece of paper, &c., received or taken by him.

Penalty for receiver in such case.

Ninth.—All venders and distributors of stamps shall carefully write on the back of each sheet or piece of stamped paper, or the like, sold or delivered by them, the date of sale and delivery, and shall attest each endorsement with his signature, written in the manner commonly used by him.

Venders to endorse the date of sale and delivery of stamps sold by them.

Tenth.—Any vender or distributor giving out or delivering any stamped paper or the like, without writing at the back of each sheet or piece his name and the date of sale and delivery as aforesaid, shall forfeit, for each and every piece of paper so given out or delivered by him, *the sum of fifty rupees*, provided the value of the paper sold do not exceed the sum of sixteen rupees; but, if the value of the paper so sold without signature exceed the sum of sixteen rupees, then the vender shall, for every offence so committed, forfeit *a sum equal to three times* the value of the paper so illegally sold by him.

Penalty for neglect.

Eleventh.—Any vender or distributor writing a false date at the back of paper, vellum, or parchment, given out by him, shall forfeit the sum of one hundred rupees for every such offence; or if the value of the stamp sold exceed sixteen rupees, then he shall forfeit six times the value of such stamped paper, besides being in both cases liable to the penalty of his bond in case of any breach of its stipulations.

Penalty for falsification of date.

Twelfth.—All venders and distributors of stamps shall comply with all applications made to them for the purchase of stamped paper or the like, with as little delay as possible. Any vender or distributor, being applied to for stamped paper, or the like, and having in his possession the description of paper required, shall, in case of refusal or wilful delay to furnish the same to the person applying for it, and tendering the value in coin of the established currency, or in notes authorised by Government to be received in payment of the public revenue, forfeit, for every such offence, the sum of fifty rupees.

Penalty for refusal or wilful neglect to deliver stamps.

Penalty for exaction of price or consideration in excess of the duty.

Thirteenth.—No vender or distributor of stamps shall, on any plea or pretext whatsoever, take or demand a higher price for the stamps delivered by him, than the sum denoted by the stamp or stamps impressed on the paper, parchment, or the like, so delivered; or any fee, reward, or consideration for furnishing stamps to persons applying for them: and any vender or distributor who, upon furnishing stamped paper, parchment, vellum, or any other article bearing a stamp, to any individual for use, shall, as a consideration for furnishing the article, or on any other pretext, take or demand, as the equivalent of the article so furnished, a higher price than the amount that may be denoted by the impression of the stamp or stamps upon such paper, parchment, vellum, or the like, shall forfeit, for every such offence, the sum of Sicca rupees one hundred.

Collectors may require collateral security from venders.

Fourteenth.—It shall be competent to the collector of stamps to demand, for *his personal satisfaction*, such *collateral security*, in *addition to the said bond, as* HE *may deem necessary*, to guard against loss from the misappropriation of the stamps delivered to the venders or distributors, or the embezzlement of the money realised by them, and to require the same to be renewed, or other security to be furnished, at any time that he may deem the same expedient; and any one unable, or refusing to give such security when required, shall not be appointed, or, if already appointed, shall be liable to have his licence immediately withdrawn.

On removal or resignation of vender, money, paper, and writings to be delivered to collector.

Fifteenth.—When the licence of any vender or distributor may be withdrawn, or when such vender or distributor shall resign the office, all stamped paper, or other article remaining in store at the time of such removal or resignation, and all accounts regarding the sale and distribution of stamped paper, or the like, at any time delivered to him, together with the balance of all money or monies which may have been realised by the sale and distribution thereof, up to the date of the said removal or resignation, and which may not have been already paid or accounted for to the collector of stamp duty, and likewise all licences, orders, or other documents or writings, which the said vender or distributor may have received from that officer, shall be forthwith delivered over to the said collector, or to such person or persons as he may appoint by a writing, under his hand and seal, to take charge thereof; receiving, for such part of the stamped paper or the like as may have been furnished to him, under the provisions of Section VII. of this regulation, the amount actually paid by him for the same, as therein directed. In case any vender or distributor, so removed

or resigning, shall refuse or fail to make over the said accounts and stores, and the balance of the accounts in cash, or any part thereof, he shall forfeit, for such failure or refusal, *a sum equal to triple the amount and value of the stamps and money* which may appear, from the accounts kept at the collector's office, to be in the possession of such vender or distributor*, together with SUCH DAILY fine, until the papers, accounts, and documents required are furnished, AS *the Board or other authority aforesaid may direct.*

Course to be followed on death of vender.

Sixteenth.—In case of *the death of any vender or distributor*, the collector of the stamp duty shall, in like manner, be empowered to demand, from the *heir or person administering to the estate of the deceased, or* OTHER PERSON *in charge of his effects*, the remainder of any store of stamped paper, vellum, parchment, or the like, in the possession of such vender or distributor, at the time of his decease, together with all accounts of the sale or distribution thereof, as well as all licences, orders, or other documents or writings as aforesaid, that may be forthcoming amongst the effects of the deceased; and in the event of any refusal, on the part of the *heir, administrator*†, or other person in charge of the effects of the deceased, to deliver the same, *or of refusal to allow search to be made, whenever the collector of the stamp duty may demand to make search for the said stores or accounts*, such heir or administrator, or other person in charge of the estate, shall forfeit, for every such offence, the sum of fifty rupees, *and shall further be subject to such daily fine until the papers, accounts, documents, and writings required are furnished, as the Board of Revenue may direct.*

Cases in which sureties may be called on.

Seventeenth.—Provided also, that it shall be competent to the collector, in the cases specified in the two preceding clauses, as well as in all cases in which a vender or distributor may fail or delay to account for and make good the value of any stamped paper, or the like, with which he may have been furnished for sale on account of Government, immediately to call upon the surety or sureties of the said vender or distributor to make good the deficiency of money or paper; and on their failure to do so,

* It is no large supposition to say, that a stamp vender may have stamps to the value of 10,000 rupees (1,000*l.*) in his possession. By this rule he is liable to a fine of 30,000 rupees (or 3,000*l.* sterling), in the first instance, with SUCH other *daily* fine as the Board of Revenue, in their tender mercies, may direct. The fine fixed by law, for a person who is not a Member of Parliament, sitting and voting in the House of Commons, is 500*l.* sterling. Let any person compare the two offences and penalties, and say if the stamp fine is reasonable and consonant to the laws of England.

† Thus a person, upon whom the law imposes the title and duties of an administrator, may become involved in stamp penalties to an *unlimited* amount, at the discretion of the Board of Revenue.

to proceed against all or any of them for the recovery of the amount*.

Venders to verify their accounts by oath or affirmation.

Eighteenth.—All persons appointed by the Board of Revenue to be venders or distributors of stamps, shall verify, by affidavit or affirmation, their respective accounts, whenever they may be required by the Board to do so; and if any vender or distributor shall refuse or neglect to verify his accounts within such reasonable time as he shall be called upon so to do by the said Board, or any member thereof, he shall, for every such offence, forfeit the sum of five hundred rupees.

Penalty for employing paper, &c., not bearing prescribed stamp.

XI. *First.*—If any person or persons shall, after the date specified in the preamble of this regulation, write or engross, or cause to be written or engrossed, on any vellum, parchment, paper, or other material, any of the matters or things on account of which such material would be chargeable with stamp duty, under the rules of this or any other regulation in force, before the said material shall have been duly stamped; or if any person shall, after the said date, in any manner make, sign, or execute, *or accept, or negociate, any deed or instrument*, chargeable with a stamp duty, that may not have been executed on paper, or other material duly stamped, such person or persons shall forfeit, for every such offence, *a sum equivalent to* TWENTY TIMES *the value of the stamped paper which ought to have been used*†.

Penalty in case of the employment of paper, &c., stamped with too low a stamp.

Third.—In case any deed or instrument shall have been executed on paper, parchment, vellum, or other material, stamped for a rate or amount of duty less than what may be the rate or amount chargeable on account of the matter or thing that may have been engrossed or written thereupon, the like penalties shall attach as have been provided by the preceding rules of this section: that is to say, a sum equal to *twenty times the excess of* the proper stamp above the value of that which may have been used, shall be forfeited, *if the error of the stamp be discovered otherwise than by the* VOLUNTARY *production of* the party or parties concerned; and a sum *equal to five or ten times the said excess* if the party shall voluntarily bring such deed to have the proper stamp affixed, within the periods above stated respectively.

* Surely this provision is sufficient. The sureties save the Government from loss, and they might be left to search for the missing stamps.

† This penalty appears exorbitant, and there is no provision to distinguish between intentional omission and accidental or unavoidable non-compliance. There cannot be stamp venders at every village all over India, where an officer or indigo planter may buy the stamps he requires; and yet the person in Calcutta into whose hands this bill or *deed* (as it is here called) may come without a stamp, incurs this heavy penalty for negociating it.

Provision for cases of accident or inadvertence.

Fourth.—Provided, however, and it is hereby enacted, that in case any deed or instrument, chargeable with a stamp duty, shall have been executed on unstamped paper, or other unstamped material, or on any material bearing a stamp of an amount not equal to the duty chargeable upon such deed or instrument, then if the person executing such deed, or any other party interested, shall establish to the satisfaction of the Board of Revenue or other authority exercising the powers of that Board, that the irregular execution of the deed or instrument was owing to accident or inadvertence, or to other unavoidable cause, it shall be competent to the above-mentioned authority, in case they should think proper to do so, to remit part or the whole of the penalties above enacted, and to cause a proper stamp to be affixed to such unstamped or improperly stamped instrument, on the payment of the actual amount of duty chargeable thereupon.

Penalty for filing or recording instruments not bearing the prescribed stamps.

XII. *First.*—Any person or persons filing, exhibiting, recording, or causing, or procuring to be filed, exhibited, or recorded, for the purposes of proof, information, registry, or for any purpose or manner whatsoever, in any court of justice or other public office, any deed, instrument, or other writing required to be written on stamped paper, which may not be written on the prescribed stamped paper, whether the said person or persons be himself the party interested in the case or matter on account of which such deed, instrument, or writing may be filed, exhibited or recorded, or be the attorney or agent of such party, shall forfeit to Government a sum equal *to twenty times the value* of the stamped paper on which such deed, instrument, petition, pleading, or document ought to have been written*.

Penalty for filing papers, &c. not duly endorsed by a vender or distributor of stamps.

Second.—If any instrument, or other writing, required to be written on stamped paper, and written on the prescribed stamped paper, shall be filed, exhibited, or recorded, in any court of judicature, or in any public office, *not having the signature of a licensed stamp vender*, or other person duly authorised to sell or distribute stamps, *endorsed upon it*, the person or persons filing, exhibiting, or recording the said deed, instrument, or writing, or causing or procuring it to be filed, exhibited, or recorded, shall forfeit a sum equal to *five times the value* of the said stamped paper†.

Penalty for filing an instrument, or the like, bearing a forged stamp.

Third.—If any deed, instrument, petition, or document, shall be filed, exhibited, or recorded, as aforesaid, having a forged or counterfeit stamp or signature, the person

* This is a tax upon law, and an obstruction to justice. It is very doubtful whether the Government have any right to impose such a regulation.

† Although it may be a perfectly regular stamp!

filing, exhibiting, or recording such deed, instrument, or document, or causing or procuring it to be filed, exhibited, or recorded, shall forfeit to Government a sum equal to twenty times the value of the stamp which ought to have been used, unless the material on which the same may be executed shall bear the endorsement required by Section VII. or Section IX. of this regulation, as the case may be, and the party shall be able to show that the material stamped with a forged stamp was purchased or obtained on the date specified on the back, and from the individual whose name may be there signed. If the required signature and date shall be duly endorsed on the back of the material stamped as aforesaid, with a forged impression, and the proof adduced to the fact and date of purchase be deemed by the officer before or in whose office the writing may be filed, exhibited, or recorded, to be sufficient, the said officer shall transmit the document to the collector of stamps, with a communication of his judgment in the case; and the collector shall, on payment by the party of one-half the established duty chargeable on account of the matter of the instrument or deed in question, forward it to the superintendent of stamps, in order that it may be duly stamped.

If without due endorsement.

Course to be followed if paper bearing a forged stamp be duly endorsed.

XV.—*It shall and may be lawful for the Board of Revenue, the superintendent of stamps, and the collector,* OR OTHER OFFICERS VESTED WITH THE CHARGE OF OFFICES ESTABLISHED FOR THE SALE AND DISTRIBUTION OF STAMPS, *to summon witnesses, to administer oaths and affirmations, and to take affidavits and affirmations, in all cases where* HE OR THEY *shall respectively* THINK IT NECESSARY *to administer or take an oath or oaths, affirmation or affirmations, in* ANY *investigation or inquiry into* ANY *case relating to the Stamp Revenue, or in* ANY MATTER OR THING CONNECTED THEREWITH*.

Board of Revenue, superintendent of stamps, and collector, authorised to administer oaths.

* It is very doubtful how far any authority but Parliament can convey this power of administering oaths and affidavits. It is here extended to a number of persons of all classes, Europeans and natives; and Hindoo stamp sellers are empowered to summon Europeans, and administer to them an oath, of course on the Gospels! A native of the lowest caste or rank, provided he sells stamps, may summon the most respectable Hindoo, and outrage his feelings by the mode of administering an oath. Any person acquainted with the horror which respectable natives entertain of such oaths, may imagine the vexations which this must occasion, and the *legal* persecution and oppression to which it is likely to lead.

No. II.

Petition against the Stamp Act.

TO THE RIGHT HON. THE VICE-PRESIDENT IN COUNCIL.

The Humble Petition of the British and Native Inhabitants of Calcutta.

That your Petitioners respectfully, but most earnestly, entreat the attention of your Lordship in Council to the Stamp Regulation lately promulgated; and which has excited the greatest apprehension and alarm among the British and native inhabitants of Calcutta.

2. In the preamble, it is stated to have been passed by the Vice-President in Council, under the powers vested in him by the 98th and 99th Sections 53 Geo. III., c. 155, and with the sanction of the Court of Directors, and the approbation of the Board of Commissioners for the Affairs in India.

3. Your Petitioners have always understood that the statute adverted to, as vesting this power in the Local Government, was limited to duties and taxes connected with customs, and was passed for the express purpose of obviating difficulties arising from the imposition of such duties and taxes within the jurisdiction of the King's Court in India.

4. Your Petitioners cannot think that the legislature intended to give to the Local Government the right of unlimited taxation. They humbly submit, for the consideration of your Lordship in Council, that if the legislature had intended to bestow any general power of taxation, beyond the subject matter of customs specifically mentioned, such power would have been introduced by a suitable preamble, reciting the expediency or exigency of the measure, and would have been strictly defined as to its objects, and cautiously limited as to its extent. Your Petitioners cannot think that Parliament would heedlessly bestow the dangerous power of unlimited taxation, by general expressions, unconnected with the subject matter, and of dubious construction.

5. Fourteen years have nearly elapsed since the enactment of the 53rd Geo. III., embracing periods of great public difficulty, when the country was engaged in expensive wars, yet no tax has ever been imposed under the authority of that statute; and your Petitioners pray that a power which, if it exists, has thus slumbered since its creation, may not be called forth at a period of public peace and tranquillity, when they hope that the exigencies of the State cannot require its exercise, and in times of commercial pressure and difficulty, when individuals are ill able to bear it.

6. Your Petitioners, in thus drawing the attention of your Lordship in Council to the legality of the regulation, and the

important principle which it involves, cannot be misunderstood. They disclaim any wish or intention to question the power or authority of Government; they are only desirous of respectfully conveying to your Lordship in Council their opinion upon a subject of the greatest moment to their present and future interests.

7. With respect to the operation of the regulation, your Petitioners are unable to express to your Lordship in Council the public inconvenience, embarrassment, and actual distress that will inevitably follow its enforcement.

8. The native shroffs, in particular, have already taken the greatest alarm, and contemplate abandoning an occupation which they could not pursue without ruin under the provisions of the Stamp Regulation.

9. In every country, such a tax must produce great inconvenience in its operation, and be attended with great vexation in its collection; but, circumstanced as this country is, your Petitioners avow their belief, that if the regulation should be carried into effect, commercial dealings would be impeded, to a degree affecting public credit, and that money transactions would be wholly suspended.

10. Your Petitioners have often experienced and acknowledged most thankfully the considerate attention always paid by Government to the opinion of the community when respectfully urged; and they entreat the attention of your Lordship in Council to the respectability and number of the signatures to this Petition, evincing that it speaks the sentiments and opinions of the British and native inhabitants of Calcutta.

11. Your Petitioners abstain from troubling Government by going in detail through the regulation, and pointing out the evils likely to ensue from each provision. They do not believe that human wisdom could devise any regulation of the same general nature and character, that would not in its consequences be injurious to the public and to Government; and the prayer of their Petition is not for the modification, but total abolition of the measure.

12. In conclusion, your Petitioners declare that no measure has ever been passed or proposed by Government which excited such general alarm and dissatisfaction; and they earnestly pray that your Lordship in Council will be pleased to allay such feelings, and restore public confidence at a period of known commercial embarrassment, by annulling and abolishing the regulation in question. And your Petitioners shall ever feel grateful.

Alexander and Co.
R. O'Dowda
J. S. Conyers
E. Trotter
Fergusson and Co.
Bagshaw, Barlow, and Co.

Lackerstein and Co.
Bruce, Allan, and Co.
John Cooke
J. W. Hogg
B. Preston
Longueville Clarke
Theodore Dickens
Charles Hogg
William Tate
W. Thompson
W. Denman
Robert Fitz-Gerald
R. Macfarlane Ronald
Edward Bird
S. Goldsworthy
George Collier
Popkin Homfray
G. Wodsworth
H. Molloy
J. Wheatley
James Minchin
Roger Winter
W. D. S. Smith
George Higgins
J. Sandes
J. W. Blachford
William Smith
H. A. Smith
Nathaniel Hudson
George E. Hudson
John Templeton
Thomas Higgs
W. Anley
J. Paliologus
C. Paschaud
J. Fountain
W. Roscoe
T. B. Swinhoe
W. Jackson
G. M. Aviet
V. A. Vertannes
J. J. Musgrove
James Wright
J. A. Camell
J. Rideout
J. J. Paul
John Agacy
W. H. Smoult

P. Minos
D. H. Renny
W. W. Hewett
Mathew and Co.
G. Henderson
John Williams
John M'Kenzie and Co.
John Gilmore and Co.
H. P. Palmer
James J. Toman
Watkins and Cliffe
Robert Syme
George Vint
A. C. Gasper
J. D. Conyers
John Dougal
Thomas Barfoot
J. R. Campe
Robert Fleming
John Lucas
M. Mackenzie
W. C. Rymer
M. Meiklejohn
Thomas Landale
Vit Lawes
M. Gasper
J. Vandenberg
James Edmond
M. Staunton
J. Llewelyn
Child and Co.
Thomas Baker
Andrew and Co.
J. Mibetre
H. Humphrays
T. Mendes
Robert Allan
C. Grieff
B. Valle
W. Byrn
T. Bason
John Mills
T. W. Purchase
G. Allan
R. Wales
W. N. Hedger
G. J. Siddons
G. A. C. Moratcai

T. Hodgkinson
J. G. Phillips and Co.
W. W. Beck
H. Michael
H. Maclean
Henry Ervine
J. P. M'Killigin
John M'Clure
R. Howard
A. Michael
R. Bolst
James Lamb
J. Benjamin
William Fowles
J. Kelso
H. G. Howe
John Burke Tully
H. D. Fowles
Robert John Bagshaw
Gillanders, Ogilvy, and Co.
F. B. Smith and Co.
James Jacobs
Thomas Johnson
W. J. Duncan
Thomas Harrowell
George Chisholm
M. Gisborne
John W. Ricketts
Thomas Dickenson
R. Swinhoe
Sheyn Legh Master
J. Crawford
Joseph Abro
George Sheppard and Co.
J. S. Dacosta
W. W. Woollaston
Lord and Co.
Watson and Co.
J. Montgomery and Co
Jessop and Co.
E. Gray
D. Mills
J. W. Cobb Hurray
D. Johnson, by W. Burrow
H. Bonnaffe and Co.
J. Manuel
Dan Ainslie
Frederick Paschaud

R. W. Allan
D. Templeton
John Cowie
John Cooper
J. Scott and Co.
Begbie and Navin
Ranken and Co.
Leyburn and Co.
J. Derozario
R. A. J. Roe
A. Mitchell
G. Stodart
J. B. Plumb
W. H. Fraser
Edward Thompson
J. Burrow
John Cox
Edward Cox
Boyd, Beeby, and Co.
Nelson M'Kean
A. P. Boyd
John L. Biss
J. B. Biss
H. Marshall
Francis Davison
John Samuel Groves
Thomas Boulton
D. M'Donald and Co.
W. Huggins
Reddall and Co.
Willis and Earle
J. Macleod
Pengelly, Mortimer, and C
Joseph Taylor
H. Morris
Thomas Burke
Dick, Crump, and Co.
C. W. Lindstedt
John Voyle
Palmer and Co.
Cruttenden, Mackillop, and Co.
S. Owen
Agabeg and Co.
Colvin and Co.
G. P. Bagram
Trotter, Gordon, and Co.
Gregory Apcar
Mackintosh and Co.

Rustomjee Cowasjee
C. A. Cavorke
R. Scott Thomson
J. Bartlett
Edward Hawkins
T. S. Hawkins
Jas. Richard
G. A. Avietick
John D. Smith
Richard Marnell
M. Cockburn
Andrew Wight
E. Macreach and Co.
G. Chater
J. P. Stacy
Thomas Bartlett
P. A. Chater
G. Mackertich
G. A. Swaris
R. Deefholtz
J. Picachy
R. Moses
Burn and Co.
A. Maclane
D. Oliver
J. J. B. Bowman
William Sinclair
Middleton and Co.
J. N. Lyall
Thomas Allardice
D. Wallace
James Sinclair
T. W. Smyth
J. Wall
J. J. L. Hoff
Joseph Savigny
John Buckland
Thomas De Souza and Co.
A. C. Gibb
Thomas Meik
James Fraser
William Phillips
James Madge
Blaney and Co.
Drummond and Wilson
Arch Duff
Buchanan, Mann, and Co.
Robert Eglinton
D. Robinson
Samuel Smith and Co.
Charles Anderson
W. Limond
Shedden and Co.
C. B. M. Jacobs
T. Burkinyoung and Co.
Twentyman and Co.
H. Osborn and Son
James Duhan
James Hosmer
Allport, Ashburner, and Co.
Macintyre and Co.
William Storm
David C. Low
William Smith
J. R. Coles
J. Ives
H. Bacon
W. F. Hair
Tulloh and Co.
Stewart and Co.
A. Thorn
William Graham
E. Nosky
L. Dithey
J. Harris
George Godfrey
J. Saunders
J. Homfray, Jun.
J. Hudson
Francis Vrignon
Carrapiet Jacob
Lewis Peters
Frith, Gordon, and Co.
Benjamin Richards
Charles Coquerel and Co.
P. S. Singer
N. Dacosta
J. Dolge
W. H. Cockell
J. Cashman
W. Warbur
J. Palmer
G. A. Prinsep
F. T. Hall
W. Prinsep
James Bryce

J. Cullen
Stewart, Robertson, and Co.
J. Somerville and Co.
William Adam
John Holmes
R. Brown
Mackenzie, Lyall, and Co.
Hugh Cathre
C. R. Read
J. W. Anderson
J. Dunn
P. Falconer
R. Crow
John Laird
William Clark
Jacob Heatly
W. Thacker
D. M. N. Liddell
H. J. Lee
J. W. Collins
A. G. Paterson
G. Ballard
John Abbott
J. Young
H. A. Hickey
J. Sutherland
A. C. Kemp
W. H. Bolst
A. Bartlett
J. J. M'Lachlan
J. F. Hodgkinson
Paul D'Mello
Simpson and Co.
John Lowe
Bush and Co.
A. B. Fraser
J. M'Kenzie
Joseph S. Pollock
William Duhan
W. Balston
James Fleming
E. Mackintosh and Co.
Currie and Co.
Dykes and Co.
Pattersons and Co.
A. Kalooss
Robert Dykes
G. Shearwood
T. B. Scott
James Ross
W. Wallis
R. Aubrey
George Hill
Gunter and Hooper
J. Robison
Francis Nelson
B. Wallace
M. F. Crisp
John William Paxton
Pittar and Co.
John Finley
W. Melville
W. H. Meiklejohn
D. Drummond
J. H. Drugueon
James Neish
J. W. Bennett
J. H. Wilson
John Arson
John Francis Twisden
J. C. Owen
James Keymer
W. J. Hollis
John Edwards
William Carr
J. W. Roberts
H. Murray
William Grant
Robert Williams
Robert Galway
F. and G. Hasted
G. Fraser
J. M'Entie
M. Moran
H. Hill
Charles J. Marshall
E. Johnson, by J. Burrow
L. Da Costa
J. Stewart
Maharaja Siva Crishna Bahadur
Baedyanath Roy
Gopeemohen Deb
Radhacant Deb
Rusomoy Dutt
Hurymohun Thagore

Woomanandana Thagore
Ram Gopal Mullick
Baishnava Cuaran Mullick
Casenath Mullick
Ruplal Mullick
Kamalacont Doss, &c. &c. &c.
And many other Native Signatures.

The whole number of Signatures—Europeans, Anglo-Indians, Hindoos, Mahometans, Jews, and Armenians, about *five hundred*.

No. III.

Reply to the Petition

AGAINST THE STAMP TAX,

Of the Merchants and Inhabitants of Calcutta against Regulation XII., 1826, *for raising and levying Stamp Duties within the Town of Calcutta.*

Territorial Dept. *Revenue.*

The Petitioners may rest assured that this Government, far from desiring to check or discourage the free expression of the sentiments of the public in the form adopted on the present occasion, is always ready to receive the representations of the community regarding any public measure affecting their interests, which may have been adopted, or may be in agitation, in order that their objections may be fully and candidly considered.

2. The Vice-President in Council was prepared to expect, from the intelligent and practical men whose names are subscribed to the present Petition, such a representation as might assist Government in judging of the probable effect of the Stamp Regulation on the various interests affected by it, and he looked naturally for a statement of the particular transactions on which the duty would bear with undue severity. Instead of this, however, the Petition declares the general unwillingness of the subscribers, and of the community, to be subjected to any kind of taxation whatsoever, and relies mainly on an argument against the legality of any measures directed to this end.

3. The argument is not substantial as applied to the enactment under consideration. If this were indeed illegal, the means of enforcing it would be wanting to the Government. It must in such case remain a dead letter, and the Petitioners would not need to address a Memorial to the Vice-President in Council soliciting its abolition.

4. As stated in the Petition, the Stamp Regulation has been

passed under the authority, with the sanctions and in the form prescribed, of the 98th and 99th Sections of the 53rd Geo. III., cap. 155. But the Petitioners argue, that the power conferred by these provisions has exclusive reference to duties of customs, and that the Act was passed merely to obviate difficulties arising from the imposition of such duties within the jurisdiction of the King's Courts.

5. A reference to the words of Section XCVIII. will sufficiently show that this is not the case. The provisions in respect to customs are contained in a different Section (XXV.), which is specially referred to in the terms "in manner hereinbefore prescribed respecting Duties and Taxes of *Export, Import, and Transit of Goods, Wares,* or *Merchandize.*" The object of the further rules of Section XCVIII. is, in the words of the Act, to confer authority "to impose all such Duties of Customs and other Taxes to be raised, levied, and paid within the said Towns of Calcutta, &c., and upon and by all persons whomsoever, and in respect of *goods, wares, merchandize, commodities, and property whatsoever*, being in any such country or place, in *as full, large, and ample manner as such Governor-General in Council, or Governors in Council respectively, may now lawfully impose any Duties or Taxes to be levied, raised, or paid upon or by any persons whomsoever, or in any place whatsoever, within the authority of the said Governments respectively.*"

6. The fair, natural, and obvious interpretation of these words can only be, that any tax, which the necessities of this Government may compel it to levy on the inhabitants of the country generally, may similarly be imposed by a regulation passed, as directed, within the limits of the special jurisdiction of the King's Courts.

7. In the eyes of the legislature in England, the inhabitants of the interior have equal claims to consideration with those of Calcutta; and it never could have been intended that the whole burthen of supporting the Governments should be borne by the former, while the latter should live as a privileged class, protected from hostile aggression and internal commotion by establishments, to the support of which they contributed little or nothing. The distinction was invidious and unjust, and it was evidently the intention of the rules alluded to wholly to remove it. At the time the Act passed, stamp duties on deeds, receipts, and money obligations, had long been levied in the interior of the country; and therefore such duties must have been distinctly amongst the "*duties and taxes,*" within the meaning of the rule cited.

8. The Petitioners proceed to remark, that they "cannot think that the legislature intended to give to the Local Government the right of unlimited taxation;" for that, "if the legislature had intended to bestow any general power of taxation, such power would have been introduced by a suitable preamble."

And whereas it is expedient that the Governments of the said Company, established at Fort William, Fort St. George, Bombay, and Prince of Wales's Island respectively, should have authority to impose Duties and Taxes to be levied within the several Towns of Calcutta and Madras, the Town and Island at Bombay, and Prince of Wales's Island, and also Duties and Taxes to be paid by persons subject to the jurisdictions of the Supreme Court of Judicature at Fort William and Bengal, the Supreme Court of Judicature at Madras, the Court of the Recorder of Bombay, and the Court of Judicature at Prince of Wales's Island respectively; be it therefore enacted, that it shall and may be lawful to and for the Governor-General in Council in Fort William, in Bengal, and to and for the Governor in Council of Fort St. George, and to and for the Governor in Council of Bombay, and to and for the Governor in Council of Prince of Wales's Island, within the respective Presidencies of Fort William, Fort St. George, Bombay, and Prince of Wales's Island, to impose all such duties of Customs and other Taxes to be levied, raised, and paid within the said Towns of Calcutta and Madras, the said Town and Island of Bombay, and Prince of Wales's Island, and upon and by all persons whomsoever resident or being therein respectively, and in respect of all Goods, Wares, Merchandizes, Commodities & Property whatsoever, also being therein respectively; and also upon and by all persons whomsoever, whether British born or Foreigners, resident or being in any Country or place within the authority of the said Governments respectively; and in respect of all Goods and Wares, Merchandizes, Commodities, and Property whatsoever, being in any such Country or place, in as full, large, and ample manner as such Governor-General in Council or Governors in Council respectively may now law-

9. The Section in question has a Preamble, specially reciting that it is expedient that the Local Governments should have the power of levying duties in the Presidencies; and it proceeds to place residents within the jurisdiction of the King's Courts on the same footing in regard to taxation as the population of the interior. So far only is the power conferred as the same may lawfully be exercised in the interior, and so far only was it obviously expedient —nay just and necessary, that it should be possessed. It cannot surely be maintained, that the expediency needed to be proved by argument, and that it was not enough simply to state what was so obvious. The Petitioners, however, are in error in speaking of the power in question, as conferred on the Local Government. No Regulation imposing such duties can be passed for Calcutta, or for any other of the Presidencies, until it shall have been first submitted for the sanction of the Court of Directors, and for the approbation of His Majesty's Government, as represented by the Board of Commissioners in England. This is a wholesome restriction on the exercise of such a power wisely imposed by the British Legislature. To these authorities, the regulation, which the Petitioners represent as in their opinion illegal, has been submitted; and, by them it has been passed with the aid of the professional talent, general intelligence, and acute discrimination which the state of society in England places at their command. The Petitioners have seen, from the Preamble cited by themselves, that this has been the case; and in the face of such evidence, they ought surely to have hesitated to join in a representation that an Act passed under such restrictions and by such authorities was illegal. This Government, they must be sensible, could never recognise such a ground for abandoning the measure, however willing it might be to admit its own liability to err in the construction of points of British Law.

fully impose any Duties or Taxes to be levied, raised, and paid, upon or by any persons whomsoever, or in any place whatsoever, within the authority of the said Governments respectively: Provided always, that no imposition of any such Duty or Tax, or any increase of any such Duty or Tax, within the said Towns of Calcutta and Madras, the said Town and Island of Bombay or Prince of Wales's Island, shall be valid or effectual until the same shall have been sanctioned by the said Court of Directors, with the approbation of the said Board of Commissioners in manner hereinbefore prescribed, respecting Duties and Taxes, of Export, Import, and Transit on Goods, Wares, or Merchandize.

10. But the Petitioners argue that, because this power has not heretofore been brought into exercise at this Presidency, therefore it should not now. The necessities of this Government have certainly not hitherto called for any further direct taxation; and although there have been periods of temporary embarrassment, the political exertions heretofore made have always been attended with advantages which have soon replaced the finances of Government on a footing of prosperity, rendering it unnecessary to seek fresh resources.

11. This cannot, however, be said of the present condition of things. The public have evidence of the insufficiency of the existing resources, in the annual invitations to subscribe to loans; and the Petitioners must be satisfied, from the uniform conduct of Government, and especially from the reductions in the rate of some, and the abandonment of other duties, made at a period when it deemed itself to possess a superfluity of income, that additional imposts would not now be resorted to if an increase of income were not deemed indispensable to the proper conduct of affairs.

12. Some time doubtless has elapsed since the Act was passed, before the necessity has arisen of calling it into action at this Presidency; but if hitherto there has been no new tax or duty imposed in Calcutta, the same may be said of the interior; and the circumstance is only a proof of financial prosperity, and of fiscal moderation under it.

13. This Government has always known that the power existed, and could be applied whenever the necessity of using it might arise. Regulations, similar in form to that which is now the subject of complaint, have at different times been passed in order to protect existing resources, or to change the objects or the mode of taxation. Thus, in 1817, two Regulations were issued for imposing heavy duties on Salt and Opium; and, in 1820, a similar law was passed for levying a general Tax on Tobacco. These may doubtless be looked upon as Custom Laws, though the scope and object of those first alluded to was protection to existing branches of revenue, rather than a mere tax on the import, export, or transit of the articles affected. As such, the rules were prepared, and as such they received the sanction of the authorities of England, prior to their enactment here; and these, with various other rules similarly passed into laws, have been recognised and enforced without question, within the limits of Calcutta, as well as in the interior. That other objects have not been made the subject of similar taxation, is ascribable to the

fact that the necessity did not exist—not to any doubt as to the sufficiency of the power possessed by the Local Government of passing enactments for the purpose, under the condition of their being first sanctioned and approved in England.

14. At the other Presidencies, and particularly Bombay, where the resources at the command of the Local Governments are more circumscribed, several taxes have been imposed in this form, and added to the public revenues. Imposts are levied there on carriages and horses. Fees at the Police, and Quarter Sessions, taxes on the use of native music in processions, and on sundry other articles of luxury, taste, and convenience. The enactments for imposing these taxes will be found in the Bombay Code for the years 1817 and 1818, and were passed, like the present Stamp Regulation, under the authority of the Statute above cited, and with the sanction and approbation of the Court of Directors and Board of Commissioners in England.

15. But the Petition proceeds to state, as a general objection to Stamp Duties, that they interfere with commercial dealings, and are likely to excite discontent. Unfortunately these are consequences inherent in the enforcement of any duty or tax intended to fall on the opulent classes of the community, who have hitherto contributed little or nothing to the support of Government. Customs, though paid, in the first instance, by the general merchant, fall ultimately on the consumer. But the banker, the money lender, and the capitalist of Calcutta, to whom, above all others, the stability of the Government, protection from external enemies, the preservation of internal tranquillity, and the strict administration of justice are essential, at present contribute nothing in return for such inestimable benefits. There is no sufficient reason why their dealings should be exempt from the obligation of contributing to the maintenance of that order under which they thrive. Nor is it just or proper that such dealings should be protected from taxation in Calcutta, when elsewhere throughout the country they are carried on subject to the disadvantage. Taxation is at best a choice of evils; but if additional revenue is necessary, and that is a point that must be taken on the credit of Government, a Stamp Duty on money transactions seems among the least exceptionable of the taxes to which a Government can have recourse. It is a tax which, as it falls chiefly on the wealthy, will of course give discontent to them; but this Government would but ill perform its duty, if, seeking the favour of the opulent classes, it consented to exonerate them, and confined its taxation to the poor.

16. The Vice-President in Council has not hesitated to enter into this explanation of the motives which have influenced the imposition of this tax, in the confidence that they will bear examination.

17. If he cannot satisfy the Petitioners of the expediency of

the measure, he yet trusts to reconcile them to the burthen by removing the impression that the act is an illegal exercise of power, and by showing that its main object is the fair and equal distribution of the public burthens by the extension of them to classes who have hitherto enjoyed an inequitable exemption.

18. The Petition does not require, nor will it admit of, any further reply. The Vice-President in Council did not anticipate from the Petitioners an application for the abolition of the enactment on the ground of its illegality, though he was prepared for an expression of dissatisfaction on the part of those affected, and for the exposition of some partial inconvenience from the operation of particular provisions of the law.

19. It will be the wish of Government to correct any inconvenience or hardship that may appear to be of sufficient magnitude to require amendment, but it cannot hold out to the Petitioners any hope that the object of their present Petition can be complied with.

By Order of the Right Honourable the Vice-President in Council.

H. T. PRINSEP,
Acting Secretary to Government.

Council Chamber, the 12th of April, 1827.

No. IV.

H. T. PRINSEP, Esq., *Acting Sec. to Government.*

SIR,—I have the honour to acknowledge the receipt of your letter, dated the 12th and received the 23rd instant, transmitting to me, as Chairman of the Committee of the European and Native Inhabitants of Calcutta, who presented a Petition praying the abolition of the Stamp Regulation, the reply of Government, which I yesterday submitted to a meeting of the Petitioners convened for the purpose.

Second.—I have been authorised and directed by the Meeting to express their best thanks to the Government for their ready attention to the Petition, and for their consideration in stating the reasons which induced them to frame the Regulation. The Petitioners feel that it would be unbecoming in them to comment on the reply of Government; but they are bound in candour to add that they cannot acquiesce in the reasoning and inferences which it contains, and feel deeply disappointed that the prayer of the Petition has been rejected.

Third.—The Petitioners respectfully urge, that the inhabitants of Calcutta have never been and are not exempted from bearing any part of the public burdens, but contribute, directly or indirectly, their full proportion to the support of the State. The

revenues of this country are not raised, as in England, by taxation, but they are chiefly drawn from the rent of land and great commercial monopolies, affecting every individual within or without Calcutta, and to the resources drawn from which all contribute.

Fourth.—The Petitioners beg to assure Government that they have not stated their opinion as to the legality of the measure without the maturest consideration; and although apprised from the Preamble that the Regulation has had the sanction of the Court of Directors and the approbation of the Board of Controul, they have no means of knowing whether it passed *sub-silentio*, or was debated and submitted to the law officers of the Crown. The Regulation was sent home for approval without the knowledge of those to be affected by it; and the public had no notice that such a measure was even in contemplation until it had gone through the formal stages, and was announced as law.

Fifth.—Government having stated that they cannot hold out any hope that the object of the Petition can be complied with, the Petitioners wish most respectfully to intimate to Government their intention to apply to Parliament for a declaratory Act, or, if necessary, a new enactment respecting the powers vested in the Local Government by the 98th and 99th Sections of the 53rd Geo. III., cap. 155; and they earnestly beg that the Right Honourable the Vice-President in Council will be pleased to suspend the operation of the Regulation till the pleasure of Parliament shall be known.

I have the honour to be, &c.

(Signed) J. PALMER, *Chairman, &c.*

April 26, 1827.

No. V.

J. PALMER, Esq., *Chairman, &c.*

SIR,—I am directed, by his Excellency the Right Honourable the Vice-President in Council, to acknowledge the receipt of your letter, dated the 26th instant, stating that the reply of Government to the Petition regarding Regulation XII., of 1826, had been communicated to those who signed it, and soliciting that the Vice-President in Council will be pleased to suspend the operation of the enactment until the result of an application to the Parliament of England on the subject of the authority under which it has been passed shall be made known.

Second.—In reply I am directed to state, that, although his Lordship in Council sees no objection to the Petitioners exercising *in this instance* the right that every one possesses of

applying to the British Legislature, the application for a suspension of the enactment in the interval cannot be complied with. I am desired to add that all correspondence in respect to matters connected with the Stamp Regulation should hereafter be addressed to Government directly, or through the Collector of Stamp Duties by the individuals making the representation.

I am, &c.

(Signed) H. T. PRINSEP, *Act. Sec. to Govt.*

April 27, 1827.

No. VI.

NOTICE.—In compliance with the terms of the Requisition received by me, a copy of which is subjoined, I do hereby request a Meeting of the Inhabitants of Calcutta, at the Town Hall, on Wednesday, the 16th instant, at 10 o'clock.

T. PLOWDEN, *Sheriff.*

5th May, 1827.

To T. C. PLOWDEN, *Sheriff of Calcutta.*

SIR,—We, the undersigned, request that you will be pleased to convene a Meeting of the British and Native Inhabitants of Calcutta, at the Town Hall, for the purpose of taking into consideration the expediency of presenting a Petition or Petitions to Parliament for declaratory Acts; or, if necessary, for new enactments, relating to the following subjects, all and each of which involve interests of great importance to this community:—

First.—The recently promulgated Stamp Regulation; and, generally, the powers vested in the Local Government, by the Act of the 53rd Geo. III., cap. 155, Sections 98 and 99, to levy Taxes within the limit of Calcutta.

Second.—The liability of landed or real property of deceased persons within Calcutta (not being Hindoos or Mahometans), to the payment of the simple contract debts in the hands of their Executors or Administrators, unaffected by the right of dower.

Third.—The right of Aliens to hold real property within Calcutta, and to transmit the same to their heirs.

Fourth.—The expediency of introducing an Act for the relief of insolvents, and to secure to their creditors an equal distribution of their effects.

We have the honour to be, Sir,
Your most obedient humble Servants,

J. Palmer
Alexander Colvin
Hurry Mohun Tagore
Radhakan Deb
J. Young
Cassinauth Bannorjee
Roger Winter
J. W. Hogg
Rustomjee Cowasjee
Theodore Dickens
Longueville Clarke
John D. Smith
Russimoy Dutt
J. Cullen
D. Bryce
Ramnarain Dutt
W. Patrick
John Smith
W. Limond
W. P. Clark
W. Melville
Wm. S. Boyd
Nath. Alexander
T. Bracken
J. Abbot
Hugh A. Hickey
G. Ballard
G. J. Gordon
Js. Calder
Ramgopaul Mullick
Ramrutton Mullick
Bustomdoss Mullick
Rammohun Roy
Rooplaul Mullick
Chundercomar Tagore
Sibnarain Ghose
Sha Gopal Doss, Monoher Doss, (signed) by Madhoy Doss
Joykissen Doss
Januckey Doss, Damoder Doss
Orjoonjee Nothjee
Nundram Bydnoth
Berjbullub Doss, Gocul Doss
Odyekwin Doss, Berjbokun Doss
Muthora Doss, Berjrummun Doss
Eacharam Hurprosad
Ruggonoth Doss Gomasta, Ramjibbon Doss, Bunjibbon Doss
Luckhoo Mull Kassinoth
Kato Baboo Lall Chaund
Sha Copal Doss Muttychund
Daby Doss Balmokund
Roybhon Hamer Mull
Puddomjee Lansee
Bhekunchund Dhunroop
Kassorychund Roybhon
Ram Doss Radhakissen
Abirchund Soornjmull
Himmut Ram Bahadormull
Chockhund Agerchund
Abirchund Ojoodhyaprosad
Daochund Tilockchund
Bahadoor Sing, Pertaub Sing
Juggomohun Doss, Kissen Doss
Suddasook Ramsook
Gamani Ram, Seta Ram
Dan Sing Bhatia
Ramjee Doss, Luchmun Doss
Gobund Doss, Dunsook Doss
Dwaraka Doss, Sunker Doss
Shree Ram Doss, Salum Sing
Soye Ram Futty Chund
Soonjee Ram, Jookee Ram
Namuck Ram, Mirza Mull
Hookum Chund Ram Bhokut
Ram Dyal Hurjus Roy
Baboo Monoher Doss, Kanooman Doss

No. VII.

To T. PLOWDEN, Esq., &c. &c. &c.

GENERAL DEPARTMENT.

SIR,—The Right Honourable the Vice-President in Council having observed, in several of the newspapers published at this

Presidency, a notification, under your signature, calling a Meeting of the Inhabitants of Calcutta, at the Town Hall, on Wednesday, the 16th instant, for certain purposes specified in a Requisition signed by some of the European and native inhabitants of this city, has directed me to express his surprise that you should in this instance have violated the rules established by the Honourable the Court of Directors and by the Supreme Government, in regard to the mode of convening public meetings of the inhabitants of Calcutta. His Lordship in Council remarks that it is impossible that you should have been ignorant of those orders, as they were not only published under date 9th of April, 1807*, but were particularly adverted to in a letter addressed to you from this department, on the 18th of June, 1819. You will be pleased, therefore, to furnish, with the least practicable delay, for the consideration of Government, whatever explanation you have to offer on this subject.

I am, &c.

(Signed) C. LUSHINGTON,
Chief Sec. to Government.

Council Chamber, 9th May, 1827.

Fort William, Public Department, April 9, 1807.

The following extract from a General Letter from the Honourable the Court of Directors, dated the 23rd of July, 1806, is published for general information.

"We direct, on the receipt of this dispatch, that public notice be issued, forbidding, under pain of our high displeasure, any public assemblage, either of our own servants or of private merchants, traders, or other inhabitants whatsoever, without first obtaining the sanction of the Government, through the medium of the Sheriff for the time being; and we further direct, that with the application for holding such meetings, the subjects intended to be taken into consideration be also submitted to your previous consideration, in order that you may have it in your power to judge of the propriety of allowing the questions that may be proposed, to be agitated; and on no consideration whatever is the Sheriff, or the officer presiding at such meetings, to allow any subject to be considered that has not been previously submitted for your consideration. We have full confidence, however, that our Governments in India will not preclude our servants or other European inhabitants from meeting

* The orders referred to are subjoined.

for the purpose of expressing their sentiments, whenever proper subjects are submitted for their deliberation."

Published by Order of the Honourable the Governor in Council.

(Signed) THOS. BROWN,
Chief Sec. to Government.

No. VIII.

To C. LUSHINGTON, Esq., *Chief Sec. to Government.*

SIR,—I beg you will assure the Government that I have received, with great concern and equal surprise, the reprehension communicated by your letter of this date.

Second.—With surprise, because directly I received the application of certain of the inhabitants of Calcutta to convene a meeting of the inhabitants generally, at the Town Hall, I immediately transmitted it to my Deputy, Mr. Charles Strettell, to whom is always entrusted the signature of the Sheriff, and the execution of all the shrieval duties, and particularly enjoined him to solicit the permission of the Government, and in all other respects to conform to previous usage.

Third.—It is evident Mr. C. Strettell's application for the permission of Government, if he made it, has not reached you; and I shall immediately send him a copy of your letter of this date, and of this letter, and require him to furnish whatever explanation he has to offer, which, directly I receive it, shall be forwarded to you for the consideration of the Government.

Fourth.—His Lordship in Council will observe that I have directed the Deputy Sheriff, without loss of time, to forbid the future repetition in the newspapers of the notification of the 5th instant; but I beg to be informed whether it is the desire of Government that the meeting which has been convened shall be cancelled, or be allowed to take place on the day appointed.

Fifth.—In conclusion, I beg you will assure his Lordship in Council, that I never can intentionally deviate from any order of the Government, and cannot sufficiently regret that my deputy should have exposed me to reprehension.

I have, &c.
(Signed) T. PLOWDEN.

Calcutta, 9th May, 1827.

No. IX.

To T. PLOWDEN, Esq., *Sheriff of Calcutta.*

GENERAL DEPARTMENT.

SIR,—I am directed to acknowledge the receipt of your letter of yesterday's date, with its enclosure, and to state to you as follows:—

First.—The appearance of the notification in question under your signature, in direct violation of an order of Government, publicly promulgated, and particularly communicated to yourself, was obviously calculated to excite the surprise of the Vice-President in Council, though it was not the intention of his Lordship in Council to convey any expression of censure on your conduct until you should have availed yourself of the opportunity offered to you of explaining it. You must, however, be held responsible to Government for the measure adopted by your Deputy, under any general delegation of authority from you to him, to affix your name to requisitions as Sheriff. His Lordship in Council suspends any further observations on this point until your Deputy's answer to the letter which you have addressed to him shall have been laid before Government.

Second.—I am now desired to intimate to you that the Vice-President in Council, having taken into his consideration the objects of the proposed meeting, as stated in the Requisition which has appeared in the public prints, feels himself precluded, by the positive orders of the Honourable the Court of Directors, from sanctioning any general meeting of the inhabitants of Calcutta having for its object the discussion of topics of the nature of those comprised in the first clause of the Requisition. Those orders render it imperative on the Local Government to prohibit all "deliberative assemblies" of persons residing in India under the licence and authority of the Honourable Company, and more especially such as have for their avowed object the consideration of the extent of the powers of the Supreme Government.

Third.—You will be pleased, therefore, to notify to the Requisitionists, that the meeting of the inhabitants of Calcutta, at the Town Hall, for the purpose stated in the first clause of the Requisition, cannot be permitted, though the proposed petition to Parliament against the Stamp Regulation, having been prepared elsewhere, may lie at the Town Hall simply for signature, but for that purpose only.

Fourth.—Although it has been the duty of Government to refuse its sanction to the proposed meeting at the Town Hall, on the 17th instant, I am directed to apprise you, that the Vice-President in Council will be prepared to sanction, on specific

application, through you, a meeting of the inhabitants of Calcutta on some subsequent day, for the purpose of considering the subjects contained in the three last clauses of the Requisition above adverted to.

I am, &c.

(Signed) C. LUSHINGTON,
Chief Sec. to Government.

Council Chamber, 10th May, 1827.

No. X.

NOTICE is hereby given, that the Meeting called under a Requisition signed by J. Palmer, Esq. and other inhabitants of Calcutta, and advertised for the 17th instant, at the Town Hall, will not take place.

T. PLOWDEN, *Sheriff.*

Calcutta, May 12, 1827.

No. XI.

To JOHN PALMER, Esq., *and other Requisitionists.*

GENTLEMEN,—The notice of the meeting advertised to take place at the Town Hall on the 17th instant, having, from inadvertence, been published in the papers without previous reference to the authority of Government, as required by a notification issued in the Calcutta Gazette of the 9th April, 1807, I have been called upon to explain the omission, and the result has been that the Meeting has been disallowed by the Right Honourable the Vice-President in Council. I have accordingly issued a notice stating it cannot take place at the Town Hall on that day.

Second.—Mr. Chief Secretary Lushington, in communicating the orders of Government, informs me that the Government consider themselves precluded, by the positive orders of the Honourable the Court of Directors, from sanctioning any General Meeting of the inhabitants of Calcutta, having for its object the discussion of topics of the nature of those comprised in the first clause of your Requisition.

Third.—I am, however, permitted to add, that although the Meeting cannot take place, as advertised, any Petition to Parliament against the Stamp Regulation, prepared elsewhere, may lie at the Town Hall for signature.

Fourth.—I am further authorised to state that the Right Honourable the Vice-President in Council will be prepared, on

specific application made through me, to sanction a Meeting to consider the subjects stated in the three last clauses of your Requisition.

I have the honour to be, Gentlemen,

Your most obedient Servant,

T. PLOWDEN, *Sheriff.*

Calcutta, May 12, 1827.

As in consequence of the above communication the Meeting at the Town Hall on the 17th, as originally advertised, cannot take place, the undersigned beg to announce that a Meeting will take place on Wednesday (the 23rd instant), at noon, at the Exchange Rooms, for the purpose of considering such petitions as may be laid before it relative to the subjects mentioned in the Requisition to the Sheriff.

Gopaul Doss
Monoher Doss
Monoher Doss
Monoman Doss
Panuhe Doss
Gooul Doss
Brijbullub Doss
Baboo Joykissen Doss
Orjoonjee Nothjee
Chundercomar Tagore
Sibchunder Doss
Aushootas Day
Radhakissen Mittr
Bhobanychurn Bonerje
Baboo Muneram
Baboo Boudinath
Hurrymohun Tagore
Roybhan Hamirmul
Kissenere Chund Roybhan
Ram Doss Radakissen
John Palmer
Ramgopaul Mullick
Ramrutton Mullick
Bustomdass Mullick
Beernursing Mullick
Ram Chunder Mittre
Longueville Clarke
J. Calder
T. Bracken
Roger Winter
John Smith
J. Young
And. Wight
T. Dickens
Surroopchund Roopchund
Puddniseenamy
Ameerchund Ajoordiapersaud
Abeerchund Seergemul
Hamitram Bhahadoormul

No. XII.

The Resolutions.

First.—Resolved, That a Petition be presented to both Houses of Parliament, praying that the Legislature will be pleased to pass an Act, declaring that the 53rd Geo. III., c. 155, sections 98 and 99, is limited to duties of customs, and that such statute does not

empower the Governor-General in Council, with the sanction of the Court of Directors and the Board of Controul, to impose any taxes within Calcutta other than duties of customs; or for such other relief as to the wisdom of Parliament shall seem fit.

Second.—Resolved, That the Petition now read to this Meeting be adopted as the Petition to be presented to both Houses of Parliament, for the objects expressed in the foregoing Resolution.

Third.—Resolved, That a Petition be presented to both Houses of Parliament, praying for the legislative enactments whereby the landed or real property of deceased persons within Calcutta (not being Hindoos or Mahometans), may be made liable to the payment of their simple contract debts, in the hands of their executors or administrators, unaffected by the right of dower; and also giving Aliens the right to hold landed property within Calcutta, and to transmit the same to their heirs; and likewise an Act for the relief of Insolvents, and to secure to their creditors an equal distribution of their effects.

Fourth.—Resolved, That the Petition now read to this Meeting be adopted, as the Petition to be presented to both Houses of Parliament, for the objects expressed in the foregoing Resolutions.

Fifth.—Resolved, That the Most Noble the Marquis of Lansdowne, and the Right Honourable the Earl of Darnley, be respectfully requested to present the above Petitions to the House of Lords, and to support their prayers with their powerful aid; and that Sir James Mackintosh and Henry Brougham, Esq. be earnestly solicited to present the above Petitions to the House of Commons, and to advocate the cause of the Petitioners.

Sixth.—Resolved, That as the success of our present efforts involves the best rights and interests of this community, that one or more gentlemen be selected to act as our agent or agents in England, whose talents, zeal, and experience may promote the great objects now sought for by the inhabitants of this city.

Seventh.—Resolved, That it will be expedient to provide a fund to defray the expenses of carrying the foregoing Resolutions into effect, and that books of subscription be opened at the several houses of agency for that purpose.

Eighth.—Resolved, That the Committee which has hitherto acted in these proceedings be appointed to carry the preceding Resolutions into effect, in conjunction with such other members as the present Meeting may think it expedient to add to their number, and that this Meeting do further vest them with full powers for that purpose.

Ninth.—Resolved, That the thanks of this Meeting be given to the Committee of Gentlemen by whom the two Petitions have been prepared, and the proceedings which gave rise to them arranged and conducted.

Tenth.—Resolved, That the thanks of this Meeting be given to the Chairman, Mr. John Palmer, for the impartiality with which he has this day presided, and the zeal and ability he has displayed throughout the whole proceedings.

Eleventh.—Resolved, That the Petitions be translated into the Hindostanee and Bengalee languages, and the foregoing Resolutions be published in all the public newspapers.

MEMBERS OF THE COMMITTEE.

Adam, W. Rev.
Ajoordiapersaud, Abeerchund
Barnard, W. S.
Boyd, W. S.
Bunnerjie, Radamadeb
Calvin, A.
Calder, J.
Cullen, J.
Clark, Longueville
Clark, W. F.
Chisholm, G.
Chund, Mootie
Cowasjee, Rustomjie
Chund, Mootie
Dickens, Theodore
Deb, Radakunt
Dhur, Bungsee
Dutt, Russomoy
Doss, Obychurn
Doss, Bridgebhokun
Doss, Muttra
Doss, Brijuman
Doss, Ram
Doss, Radakissen
Gisborne, M.
Gillanders,
Hogg, J. W.
Hogg, C.
Hunter, J.
Hamilton, Claude
Hare, David
Hastie, R.
Hamirmull, Roybhan
Laruleta, M.
Livingston, W. A.
Lyall, J. N.
Leyburn, G.
Mullick, Beernursing
Mullick, Ramgopaul
Mokund, Daby Doss Ball
Palmer, J.
Prinsep, C. R.
Patrick, W.
Paxton, J. W.
Rickets, J. W.
Roy, Maha Rajah Buddinauth
Roy, Rammohun
Smith, William
Smith, J.
Sutherland, J.
Sheddam, W. P. R.
Sib Crishen, Maha Raja
Trotter, E.
Tate, W.
Tagore, Hurrymohun
Tagore, Prussonocomar
Vrignon, F.
Winter, R.
Wight, A.
Young, J.

No. XIII.

Resolution of the Committee, entrusting Mr. Hogg with the Charge of the Petitions, 30th May.

That Mr. J. W. Hogg, being considered by this Meeting as a fit and proper person to be entrusted with the interests of the British and Native Inhabitants of Calcutta, be requested to assume charge of the Petitions, and to proceed with them to England with the least practicable delay.

That the Committee open books of subscription immediately, for the purpose of raising the necessary funds to enable them to arrange for Mr. Hogg's proceeding to England, or to carry the Petition before Parliament in such other way as may appear to them most advisable should he be unable to undertake the mission.

No. XIV.

Resolution of the Committee to entrust the Petitions to Mr. Crawfurd.

J. W. Hogg, Esq. being unable to undertake the mission, the Committee, on the 24th of June, resolved, that the Petitions be entrusted to John Crawfurd, Esq. late Envoy to Ava, and Commissioner in Pegu.

No. XV.

Extract from Mr. H. T. Prinsep's History of Lord Hastings' Administration.

"In the first place, it is to be observed that the revenue of India is for the most part, if not entirely, an absolute property attaching to the possession of the country. Its amount is not regulated, as in England and most European countries, by any direct reference to the wants of the state. Instead of determining, in the first instance, the amount required for civil and for military charges, or for other disbursements of the year, and then settling the ways and means by which this specific amount shall be levied, the finance of India begins at the other end. The revenue is fixed and certain: if the charges can be brought below it, the surplus is nett profit to the Company or to the nation. If, on the other hand, a war, or other temporary exigency, demands a larger expenditure than the fixed revenue of the year, the Government has not the option of providing for its wants by fresh taxation: the only expedient is to anticipate some of the existing revenue,

by a loan on the terms of the day. The debt of India is thus a mortgage on the Government income, incurred either for its preservation or improvement, or for the acquisition of further income; and the question, whether any particular measures have been attended with financial benefit, is resolvable by the simple calculation of whether the nett revenue produced is worth the outlay. At the same time, the taxation being always the same, whatsoever may be the expenditure, the debt has nothing of the character of an optional alleviation of the burdens of the present generation, by throwing some additional load on futurity, which is the description given of the public debts of most European states."—*Vol. II., p. 422, 8vo. edition.*

No. XVI.

NOTICE, *That Europeans* found *in the Interior, i.e. at a distance of* TEN MILES *from Calcutta, without a Passport, will be stopped.*

Fort William,
General Department, the 4th August, 1826.

IT having come to the knowledge of Government, that Europeans are in the habit of visiting the upper provinces, in the prosecution of commercial speculations, or for the temporary purpose of disposing of investments of goods, without having obtained the previous permission of Government to proceed to the interior, Notice is hereby given, that instructions will be issued to the magistrates of the several districts, bordering on the rivers, to stop all Europeans, whether British-born subjects or otherwise, and Americans, not being in the service of His Majesty, or in the civil or military service or employment of the Honourable Company, who *may be found* in the interior, *at a distance of* TEN MILES *from the Presidency*, and unprovided with a passport.

Applications for passports are to be made in writing to the Secretary to Government in the General Department, and are to contain the following particulars;—

First.—The name and occupation of the person applying.

Second.—Time of his arrival in India, and whether with or without a licence from the Court of Directors.

Third.—The place or places to which the individual may be desirous of proceeding; and,

Fourth.—The general object of his journey.

By command of the Right Honourable the Vice-President in Council.

(Signed) C. LUSHINGTON,
Chief Secretary to Government.

No. XVII.

The late Calcutta Chronicle.

Rude times give not reasons.
Mill's Hist. of Brit. India, 2d Ed., Vol. I., p. 255.

The Proprietor of the late *Calcutta Chronicle* yesterday informed the subscribers to that Paper, that a respectful application had been addressed to the Government, praying for a renewal of the Licence on grounds which, it was hoped, would be successful. He has now to add, that the application has been unsuccessful; and for the information of his friends and the public, he subjoins the correspondence that has passed on the occasion, republishing the first letter of Mr. Secretary Lushington, that the whole may be presented to the reader at one view.

To Mr. William Adam *and Mr.* Villiers Holcroft,
Proprietors of the Calcutta Chronicle.

GENERAL DEPARTMENT.

Gentlemen,—The general tenour of the contents of the *Calcutta Chronicle* having been for some time past highly disrespectful to the Government, and to the Honourable the Court of Directors, and that paper of the 29th instant, in particular, comprising several paragraphs in direct violation of the Regulations regarding the Press, I am directed to inform you, that the Right Honourable the Vice-President in Council has resolved, that the Licence granted to you on the 25th January last, for the printing and publishing of the *Calcutta Chronicle*, be cancelled; and it is hereby cancelled accordingly from the present date.

I am, Gentlemen,
Your obedient Servant,
C. Lushington,
Chief Secretary to Government.

Council Chamber, the 31st May, 1827.

Charles Lushington, Esq., *Chief Secretary to the Government.*

Sir,—I have the honour to acknowledge the receipt of your letter of this date, informing me that the Licence of the *Calcutta Chronicle* is cancelled by the Right Honourable the Vice-President in Council.

As his Lordship in Council has not seen fit to indicate the particular articles or paragraphs that have brought upon me this heavy expression of his displeasure, I am at a loss to know wherein my offence consists, what are the violations of the Press

Regulation to which his Lordship refers, or in what respects the general tenour of the paper has been considered as highly disrespectful to the Government and to the Honourable the Court of Directors.

I beg to call to the recollection of his Lordship in Council, that the Rules attached to the Press Regulation are expressly declared to "impose no irksome restraints on the publication and discussion of any matters of general interest relating to European or Indian affairs, provided they are conducted with the temper and decorum which the Government has a right to expect from those living under its protection; neither do they preclude individuals from offering, in a temperate and decorous manner, through the channel of the public newspapers or other periodical works, their own views and sentiments relative to matters affecting the interests of the community." With profound deference to his Lordship in Council, I beg to state that, in offering my sentiments relative to matters affecting the interests of the community, I am not conscious of having transgressed the bounds here prescribed.

I beg respectfully to submit, for the consideration of his Lordship in Council, that in every former case of suppression several previous admonitions have been given; whereas in the present case, although I am informed that the general tenour of the contents of the *Calcutta Chronicle* has been considered, for some time past, highly disrespectful, yet the withdrawal of the Licence is sudden and unexpected, and has not been preceded by any authoritative warning, to which it would have been at once my duty, my interest, and my inclination to attend.

Knowing the difficulties and dangers that beset the path of an Indian editor, I was originally induced to allow my name to be sent in to Government in that character with extreme unwillingness, which was vanquished chiefly by the hope of being instrumental in saving from destruction the property of a poor man, vested in a paper that had incurred the displeasure of Government; and the leniency shown by Government in that case subsequently encouraged me to embark property on my own account in a similar concern. I venture to hope, that an engagement thus commenced for the benefit of another, will not be terminated by the fiat of his Lordship in Council to my great loss, without any premonition for my guard and guidance.

I have only to add, that should his Lordship in Council be pleased to extend to me the same consideration which has been bestowed upon others in similar circumstances, it will be my earnest endeavour to avoid whatever may appear likely to be deemed a violation of the Press Regulation.

I have the honour to be, Sir,

Your obedient Servant,

W. ADAM,

Sole Proprietor of the Calcutta Chronicle.

Calcutta, 31*st May*, 1827.

To Mr. WILLIAM ADAM.

GENERAL DEPARTMENT.

SIR,—Your letter of yesterday's date having been laid before Government, I am directed to inform you that the Right Honourable the Vice-President in Council does not think it necessary to make any more specific reference to the objectionable passages contained in the *Calcutta Chronicle* of the 29th ultimo, than was done in my communication of yesterday.

Second.—I am desired to add, that the remainder of your letter requires no other reply, than that the warnings publicly given to other editors were sufficient for your information, and that Government does not see fit to accede to your application for permission to continue the publication of the *Calcutta Chronicle.*

I am, Sir,

Your obedient Servant,

C. LUSHINGTON,

Chief Secretary to Government.

Council Chamber, the 1st June, 1827.

The suppression of a paper in Calcutta by the mandate of Government is not a new thing: but the suppression of the *Calcutta Chronicle* is attended by circumstances of a peculiar nature, which furnish some novel illustrations of the state of law and government in this country. It is not, however, the intention of the Proprietor to offer those reflections which suggest themselves to his mind on this occasion, because, from higher considerations than a regard to his own personal convenience or safety, he is desirous of avoiding a course that might subject him to the penalty of transmission, to which, as a British-born subject, he is liable.

He must, however, be permitted to express his regret, that the "Right Honourable the Vice-President in Council does not think it necessary to make any more specific reference to the objectionable passages contained in the *Calcutta Chronicle,*" than a bare mention of the paper of the 29th ult., as it has generally been considered *necessary* to let a culprit know why and wherefore, on what specific grounds and evidence, he is convicted, condemned, and punished. There cannot be a stronger or clearer proof of the uncertainty of the law regarding the press, and the difficulty if not impossibility of escaping from its penalties, than the fact, that of different individuals of great judgment and experience who have attempted to specify the offensive paragraphs, each has differed from all the rest; and no one, as far as the Proprietor can learn, has fixed upon *the* paragraph which he happens to know, on good authority, was the *ostensible* reason for suppressing the paper.

Arrangements are in progress for the purchase of the stock and printing materials of the late *Calcutta Chronicle,* by an individual

who may probably possess sufficient penetration to understand, and prudence to observe, the Press Regulation. Should this individual succeed in obtaining a licence for a new paper, it will be forwarded to the subscribers of the late *Calcutta Chronicle*, with the strongest recommendation of its Editor, who is satisfied that it will be found to merit their support.

The Proprietor takes his leave of his readers with the gratifying conciousness, confirmed by the suffrages of a numerous and constantly increasing list of subscribers, that the *Calcutta Chronicle*, in its brief day, has done the public some good service.

Calcutta, 2nd June, 1827.

FINIS.

PRINTED BY T

OBSERVATIONS

UPON THE

IMPORTATION OF FOREIGN CORN:

WITH

THE RESOLUTIONS MOVED

BY

LORD REDESDALE

IN THE HOUSE OF LORDS, MARCH 29, 1827;

AND

HIS SPEECH THEREUPON,

MAY 15, 1827;

(WITH SOME NOTICE OF OBSERVATIONS THEN MADE ON THOSE RESOLUTIONS;)

And also,

REMARKS UPON AN ACT PERMITTING IMPORTATION OF CORN, MEAL, AND FLOUR, UNTIL MAY 1, 1828.

LONDON:

J. HATCHARD AND SON, 187, PICCADILLY.

1828.

372.10342

OBSERVATIONS

UPON THE

IMPORTATION OF FOREIGN CORN, &c.

The cry has gone forth: "The landed interest must be put down!" and revolutionists, of all descriptions, have joined in the cry; conscious that the destruction of the landed interest (or in other words, the ruin of all those whose property is dependent on the cultivation of the soil of the country) must be the first step towards the overthrow of the ancient constitution of the government, founded originally on property or interest in land, and still principally supported and maintained in its administration, by and at the expence of that part of the population whose property and interests depend on the produce of land; and especially of land cultivated for the purpose of raising corn and other food, and for the production and maintenance of animals, and the production of wool, (the original foundation of the staple manufacture of the country,) and other articles which are the produce of animals;

all forming together the profit derived from the cultivation of such land.

To accomplish this object, the revolutionists have long laboured; and particularly certain persons who have assumed the appellation of political economists, and under that disguise have been indefatigable in attempting to persuade the world that mankind have been, every where and at all times, the victims of a mistaken policy; or rather of the fraudulent misrepresentations of those whose interest it was to deceive them. For this purpose, these revolutionary economists have put forth their wild theories; founded on false assumptions, and on extravagant fancies of the possible perfection of man, and the union of all mankind in one great republic.

To effect the destruction of the landed interest in this country, the revolutionists are conscious that it is first necessary to reduce the profit derived from the cultivation of land; and thus to reduce the population employed in that cultivation, and in the various employments dependent upon it; and consequently to reduce the number of persons interested in its welfare, and their importance in physical strength, as well as in wealth. Conscious, also, that the physical strength and wealth of those persons, if fully exerted, is yet too great to be overpowered by the weight of such (fortunately not the whole)

of the manufacturing and trading part of the population, as these revolutionists may hope to engage in forwarding their views, by representing the profits of the agriculturists as the obstacle to immense extension of manufacture and trade; exciting thus the thirst of gain in those who may hope to benefit, and perhaps have little to lose, by extravagant adventures; and sometimes engaging too much of the attention of men who ought, on just reflection, to doubt at least of the probable advantage to be derived from the speculations of the economists.

The importation of foreign agricultural produce of every description is the obvious mean to that destruction of the agricultural property of the country which is so eagerly pursued. By such importation the revolutionists hope to throw out of cultivation a large portion of the land now employed in tillage; and they industriously represent the cultivation, by tillage, of any land not possessing by nature great fertility, (and, consequently, far the greatest portion of the land now in tillage,) as unavoidably tending to raise the price of corn, by the expense of its cultivation; and they insist, that the cultivation of such land is injurious to the whole population not employed in tillage. Thus they propose, first to arrest all further improvement of the country by increase of tillage, and gradually to accomplish the abandonment of all cultivation of a great part of

the land now in tillage. They pretend, at the same time, that it would be beneficial to the country to convert the portion of land which they would throw out of tillage, to the pasturage of animals; but, at the same time, that no profit may be derived from such conversion, if effected, they have urged, and in a great measure have prevailed on the government of the country to adopt, an almost unlimited importation of foreign wool, and of many other foreign articles, on which the profit arising from the pasturage of animals principally depends. Thus they hope, in time, to accomplish such a reduction in the value of all agricultural profits, whether arising from tillage, or from pasture, as will drive out of the country a large portion of its agricultural population, and render the remaining population of every description wholly dependent on manufactures and trade. Encouragement to emigration, of a portion of the agricultural population, at the public expense, has already been proposed; and manufacturers and traders have been induced to approve of this suggestion of the economists, without duly considering how far the home market for articles of manufacture and trade may be affected by such emigrations, or by the destruction of the profit of agriculture, reducing to comparative poverty a large portion of the population remaining in the country; or how far the exportation of articles of manufacture and trade

will be increased, and rendered profitable to the country, by the ruin of its agriculture; or whether the result will finally be, to reduce or increase the real price of agricultural produce in the home market, according to its value in exchange for articles of manufacture and trade, which must be its real value, in the just estimate of value to the manufacturer and trader.

It behoves, therefore, the manufacturer and trader, the stock-holder, the capitalist, and every person interested in the welfare of this country, (viewed in all its parts, in all its relations to other countries, and with regard to its internal government, its external power, its wealth, and its independence,) to consider, coolly and deliberately, what are the real advantages derived from the cultivation of the soil; how far the manufactures and trade of the country have originated from, or are dependent upon, its cultivation; and what may be the consequences of allowing the importation, without restraint, or without effectual restraint, of foreign agricultural produce, so far as it may injure the actual or possible cultivation of the country; whether such importation shall operate only to arrest further improvement, or shall extend to worse consequences, involving in general ruin, agriculture, manufactures, and trade, the happy form (as long esteemed) of our constitution of government, the whole wealth and strength of the

country, the character of its people, and every advantage by which it has been hitherto most distinguished: whether this country ought to be guided, on an important article of policy, by what has been deemed the wisdom of ages, founded on experience, or by the modern speculations of those who call themselves political economists;—speculations, the effect of which has never yet been tried in any country.

In this country, the policy of allowing the importation of foreign agricultural produce, to the prejudice of the produce of the country, has, at various times, agitated the public mind. The importations of foreign corn which have, of late years, been at different times allowed, (when no danger of want, from the failure of home produce, appeared to warrant the importation as a measure of necessity to avoid the misery of famine,) and the importation of wool, without any pretence of scarcity of the home produce, and of tallow, and various other articles, the produce of agriculture, and the profit of which is important to the production of corn, have already greatly distressed all those whose means of subsistence have depended on the produce of agriculture; as owners or occupiers of the cultivated land of the country; as labourers, employed in the cultivation of such land; or as labourers or artificers employed in various ways for the purposes of, or connected with that cultivation, or in those

improvements of the country which are the result of cultivation; and also all the dealers in the various articles of necessity or luxury, demanded, either for the purposes of agriculture, or to supply the wants or convenience of those interested in the agriculture of the country or its consequences; comprising many manufacturers and traders, and composing in the whole a very large, and indeed the largest, portion of the population of the country; particularly those who, at the same time that they bear at least an equal share of all other public burdens, unquestionably bear the largest portion of the burdens, which have been imposed for the purposes of the internal government of the country, legislative, judicial, and administrative; for the maintenance of the established Church; and for the maintenance of those whose infirmity, poverty, or want of employment, throw them as a burden on others. For the agriculture of the country is directly taxed, in various ways, to a large amount; while all other property, even including property in land not employed in agriculture, is scarcely taxed directly, but only either indirectly, or in a very unequal proportion. Personal property, unconnected either with land, with manufactures, or with commerce, (a very large proportion of the property of the country,) is scarcely subject to any tax, directly; and the industry of those who are not employed in the cultivation of land,

bears a very small proportion of many burdens which directly, and almost exclusively, oppress the cultivator. The burthens which fall on land not employed in agriculture, but used for various purposes of trade, of manufacture, of convenience, and of luxury, and producing great profit to the owners and occupiers, bear no just proportion to the burthens which fall on cultivated land.

The effects, therefore, of the importations of foreign agricultural produce which have lately taken place, have fallen most grievously on those engaged in the production of the same articles from the land of the country; have reduced many from affluence to poverty, and have greatly diminished the *capital employed in agriculture*, threatening a great diminution of its produce, which importantly depends on the amount of the capital employed. Such importations must tend to prevent the extension of cultivation to vast districts, still capable of great improvement, and which might, by improvement, be rendered highly beneficial to the country at large; increasing its wealth and strength, as its wealth and strength have been formerly increased, by the cultivation of districts before uncultivated. And if the importation of foreign agricultural produce should be encouraged to the extent to which it has been proposed to carry it, the effect must finally be, not only to ruin all those

who now depend on the agriculture of the country, but to render this country so far dependent for the subsistence of its population on foreign countries, and tributary to them for the amount of the supply which they may afford; thus encouraging the improvement of the cultivation of those countries, and transferring to them a portion of that wealth, that capital, by which this country might be otherwise cultivated, and of that strength, the result of its agricultural wealth, which has contributed to enable the British empire to hold a distinguished rank amongst the nations of the world. Thus even its security from foreign power may be put in hazard.

The effect must also eventually shake to its foundations, if not entirely overthrow, that constitution of government which has been for ages the darling object of Britons, and the envy of those who have been sensible of its value, and have not had the benefit of similar institutions.

The subject, therefore, is of the highest importance, and requires the most serious and deliberate consideration and discussion. It concerns the welfare, ultimately; of the whole empire, and of every individual whose interests are involved in the interests of the whole empire.

Serious and deliberate consideration and discussion of this most important subject, in all its

parts, was invited, and the opportunity offered, by the resolutions moved in the House of Lords on the 29th of March, 1827, extending to every part of the subject, when a measure was in progress in parliament, which its most strenuous promoters would not deny, must, if passed into a law, importantly affect (for good, or for evil) the best interests of the country. The resolutions were printed for the use of the House, but rested on the table till the 15th of May following, when it was proposed to refer them to that free discussion which the subject could most conveniently receive by the medium of a committee of the whole House, unembarrassed by the forms necessarily observed in the progress of legislative measures.

The discussion was avoided by a motion to adjourn the House.

If the advocates for the importation of foreign agricultural produce were fully confident of the solidity of the arguments which they could offer in support of the measures which they had proposed, the fullest discussion of the subject must have produced their triumph. When they not only avoided that discussion, but abandoned a measure which they had brought forward, suggesting for that abandonment reasons which could not be very satisfactory to themselves, it may be suspected that doubts had occurred, which had rendered *some of them* afraid of go-

ing the full length to which modern speculations in political economy might have led them.

But though they thus abandoned their principal measure, (that which produced the resolutions, of which they avoided the discussion,) they brought forward a partial measure, injurious, as far as it extended, to the agriculture of the country, and affording ground for apprehension that their first purpose was not wholly abandoned, and might be brought forward again; especially if any considerable failure in the crops of the country should give to the supporters of the measure the cry of famine; a cry which has been before used for the same purpose.

It became manifest, too, that one object in view, both in the measure that was carried, and in that which was abandoned, and also in former measures adopted encouraging the importation of foreign agricultural produce, was to supply deficiency in the public revenue, occasioned by the hasty abandonment of the property-tax, and the indiscreet repeal of other taxes, particularly the salt-tax, before sufficient provisions had been made for defraying all expences incurred in the late war. By the importation of foreign agricultural produce, which has lately been authorized by the legislature, under the pretence of danger of famine, a considerable revenue has been raised; and the importation has thus operated, in effect, as a new land-tax; affecting, ex-

clusively, land employed in agriculture; and if the abandoned measure had been carried, it would have had the same effect.

The very form of the bill by which that measure was attempted, demonstrated that revenue was directly its object. The bill had for its title, "An Act to grant to his Majesty Duties of Customs on Corn," and was in form, as well as in effect, a grant of revenue to the crown. Indeed it was rather admitted than denied, that increase of the public revenue was one object of the measure, if not a principal object.

It was, so far, a measure of finance, founded on false pretences, and imposing a burden on those before most heavily charged. As a measure of finance it was therefore grossly unjust, imposing a tax, exclusively, on those before most heavily burdened.

But men are easily led to throw upon others a burden of which they imagine they shall not feel the weight; and a land-tax, bearing exclusively on land employed in agriculture, though it must, ultimately, in some degree affect others, as well as the owners of such land, may be hailed by many as throwing on others a burden which they would themselves wish to avoid.

Every man is desirous of purchasing bread at the cheapest rate; every man does not readily perceive that the object of the Corn Laws was, by the encouragement of agriculture, to procure

for him, permanently, bread at the cheapest rate, duly estimating the true meaning of the words *cheap* and *dear*.

The cry of "No Corn Laws" has therefore often been successfully used for the worst purposes. It was used, not many years ago, by those advocates of liberty and equality, who professed to be engaged in "the great cause of all the world; to fix, on the lasting principles of peace and citizenship, the great republic of man; when," in the language of the French economists, "reciprocal interests should attach man to man throughout the world, and restore those bonds by which the great family of the human race ought to have been always united, and which the creation of *national families* had broken." When, according to the prophecy of a revolutionary song,

> "War and rivalry should cease,
> And all the world one nation."

Our modern economists still have the folly to hope, or the wickedness to express a hope, for this happy event; and they exult in the prospect of its accomplishment as the unavoidable effect of their generous system; and they proclaim, in the language of triumph, the approaching accomplishment of this happy event.*

* Macculloch on Political Economy, 121, 122, 127, 137.

Can men who indulge in such wild speculations reason justly on the subject of which they profess to treat? The foundation on which they build is unsound, and the superstructure which they wish to erect, is like "the baseless fabric of a vision."

The *present* state of the world does not offer to the minds of more sober men a very encouraging prospect of the rapid establishment of this universal peace and goodwill, rendering all the world one nation.

And can it be the will of providence that all the inhabitants of the earth should be thus united? Why has that providence ordained such marked distinctions of men, in person, in character, in habits, in manners, in language; so many obstacles to the union of man in one great republic. And have we not been told, by the highest authority, that "nation shall rise up against nation, and kingdom against kingdom, even unto the end?"

In this universal union of man, this dissolution of distinction of nation, is it supposed that all men will adopt the virtues only, without any mixture of the vices of the various nations which now people the earth? Even the poet could not contemplate the offspring of his fancy, the

"Aurea ætas—quæ vindice nullo,
Sponte sua, sine lege, fidem rectumque colebat;"

without adding,

"Nondum cæsa suis, peregrinum ut viseret orbem,
Montibus, in liquidas pinus descenderat undas,
Nullaque mortales, præter sua, litora ,rant."

The personal character of the people of this country—

"The country
Where English minds and manners may be found,"

has been attributed, in a degree, to its insular situation, separating the largest portion of its population from the contamination which it might otherwise have suffered.

If we are to act according to the dictates of reason and experience, we can never adopt any measure of policy founded on the possibility of the attainment of that universal peace and good-will, on the hope of which some of the modern political economists have formed a large portion of their theories. We must consider man as he is, and as man always has been; and act upon the supposition, that such as he has been, man will continue to be; and that whatever philanthropy may induce us to feel for others, true charity must always begin at home.

We must therefore look to home, to our own country, and our own people, as the first objects of our care; consider what *their* interests require, and what the interests of *all* require; and especially what is necessary to the independence

of our nation; to its strength, as well as to its wealth.

"The strong man armed keepeth his goods in peace; but when a stronger than he cometh, he taketh from him the armour in which he trusted, and divideth the spoil."

Man has been, at all times, and every where, too apt to be discontented with blessings enjoyed; and too often disposed to abandon them, in pursuit of some phantom, deceitfully offered to his view, which he has attempted to embrace, and which has vanished with the embrace.

A cry of discontent is easily raised on any subject; and many are eager to follow the cry, without troubling themselves to consider whether the cry is well or ill founded; whether what they have been taught to call a grievance was not, in its effects, one of the causes of the blessings which they enjoy.

Thus a cry has been often raised against the Corn Laws; and many have joined in the cry without taking the trouble to inquire why those laws have been made, what has been their effect when in force, and what the consequences of abandoning the principle upon which they were framed.

When, after the civil war which terminated the unfortunate reign of Charles I., the frequent change of government which followed, and the inconvenience suffered from each new institu-

tion, had brought to the recollection of the people their ancient government, and Charles II. was suddenly, with little forethought of the future, restored to the throne, his parliament found, that during the disturbances which had prevailed the cultivation of the country had suffered, and that corn was (according to the value of money at that time) at a very high price, compared with the price of former times. They inferred, from this price, that the produce of the country was not equal to the demand for corn; and they conceived that the deficiency had probably arisen from two causes—that the cultivation of the land in cultivation had suffered in the disturbed state of the country—and that cultivation had not been extended in proportion to the increase of population. They found, that great tracts of land capable of cultivation, remained uncultivated, and might by cultivation be rendered productive; and they thought, that by general encouragement of cultivation, both of land before cultivated and of land then uncultivated, the wants of the population might be amply supplied. They were aware, that to accomplish this, the cultivation of land must be profitable to those engaged in it; and they thought that the wise course for the legislature to pursue was, not to reduce the price of corn by importing foreign corn, but, by preventing such importation, to encourage better cultivation of the lands then cul-

tivated; and, by the same means, to encourage the cultivation of lands not then cultivated, but capable of valuable production. They determined therefore to forbid the importation of foreign corn, unless the price should rise so much beyond the ordinary price, as to demonstrate such a deficiency in the crops of the country, that the horrors of famine might be deemed inevitable, unless the deficiency should be supplied by the abundance of other countries.

They did not act on mere theory. The experience of the world had taught them that no trade would be long pursued, if not generally profitable to those engaged in it; and that to induce new adventure in trade, the prospect of profit must be afforded. They considered agriculture as a trade, and a trade liable to considerable hazard; and that to encourage adventure in it the prospect of profit must be afforded.

They had also before them the experience of a former age, and they observed the policy then adopted under similar circumstances.

When the contest between the houses of York and Lancaster had desolated England, and diminished the produce of the country, by diverting the people from agriculture to arms, and by exhausting, in the expence and consumption of war, a large portion of the capital which had been employed in agriculture, the wisdom of the parliament of Edward IV. was called upon to

restore the agriculture of the country. That parliament, conceiving that for this purpose the trade of agriculture must be made profitable, and to that end must have no rival in the market to blast the hope of gain, imposed a duty on the importation of foreign corn, which, according to the value of money at the time, amounted, generally, to a prohibition on importation.

This measure then restored plenty; and by encouraging cultivation, and affording to the cultivator a sure market for his produce, it produced considerable extension of cultivation, and great increase of wealth and population.

As experience had justified the measure adopted by the parliament of Edward IV., the parliament of Charles II. conceived that they were fully warranted in adopting a similar measure.

Experience of the benefit derived from the policy thus adopted by former parliaments, induced the parliament of William and Mary to go further. The difference of seasons operating on agriculture, renders the produce of one year often far greater than the produce of another year; and might thus, in a plentiful year, reduce, by a glut in the market, the home price of corn so low, as to produce inconvenience to the cultivator, and discourage perseverance in improvement. To prevent this, it was thought advisable to encourage exportation, whenever

the plenty of favourable seasons might otherwise occasion such a glut in the market. The parliament conceived that to insure plenty in all seasons, production beyond demand in plentiful seasons ought to be encouraged.*

Under the policy thus pursued through ages, the cultivation of the country was rapidly extended, and improved as well as extended. Vast tracts of land were made productive of corn, which had before been unhealthy marshes, or wastes affording a poor subsistence for a few animals; and such wastes, when made capable of producing corn, were found capable also of subsisting, by the effects of cultivation, more animals than had been before fed on the uncultivated wild, and animals yielding a far more valuable produce. At the same time, by the inclosure of common fields, the cultivation of those lands was greatly improved; and the parts of such fields which were best adapted to the purposes of meadow and pasture, were converted into grass-land; and the increase of animal food was made to bear a just proportion to the increase of corn, and at the same time to contribute to the increase of the production of corn. The general management of land was

* It has been attempted to ridicule this measure, and to assert that it had no effect in encouraging cultivation. It might as justly be asserted that the certainty of a profitable market is no encouragement to the extension of any manufacture.

also greatly improved; new articles of production were cultivated; manures were more plentifully bestowed on the land, and sought for at a greater distance; new manures were discovered, and their proper application ascertained; and thus, in the course of years, every acre of land in cultivation became more productive of food for man, and for animals employed for the various purposes for which they became in demand; and this result was the effect of various experiments, and of skilful management, conducted, at first, at considerable hazard and expence, under the protection of the laws framed for the purpose of encouraging such adventures.

Under this protection, success encouraged the employment of more industry and more skill; and the employment of more capital, without which industry and skill may be in vain employed to produce the profitable cultivation of land.

The increase of cultivation, increased the population employed in cultivation; and the profit arising from cultivation increased the means of those employed in it. The increase of cultivation increased also the demand for articles of manufacture and trade, and the prosperity of all, agriculture, manufactures, trade, gave a progressive impulse to industry, to production, and

to accumulation of capital, the instrument by which all must be kept in motion, and the continued prosperity of all secured.

The prosperity thus produced having created a rapid increase of population, created also an increase of consumption greater than in proportion to the increase of population; an increase of consumption, in proportion to population, being the constant and unavoidable consequence of that luxury which prosperity produces.

The effect of bad seasons, at different times, deprived the country of the ordinary amount of production. If, at such unfortunate times, the government was in difficulty or disorder, popular clamour prevailed against the experienced policy of the parliament of Charles II., and obtained temporary suspension of that policy; but this occasional submission to popular clamour, during many years, lasted only for a short time, and the former policy was constantly restored; a thorough conviction, arising from experience, then prevailing, that the most certain way to obtain cheap bread was to encourage the cultivation of the country for the production of corn.

At length an unfortunate time arrived, when the country was long distracted by political contests, which were followed by the revolt of the North American colonies, producing a disastrous

war, concluded by a peace which created much discontent, and leaving the country burdened with heavy taxes. Failing harvests raised the price of corn, and the ministers of the day, yielding to popular clamour, abandoned the old policy of the country, and allowed the importation of foreign corn by destruction of the ancient law. Before the country had recovered from the effects of the American contest, a revolution in France threw all Europe into a new and perilous situation, and finally involved this country in a long war. We came out of this last dreadful contest with a great deal of military renown by sea and by land, but with an enormous increase of the national debt; and the agricultural interest, oppressed by that debt, was loaded with a heavy incumbrance of an unemployed population, which during the war had been maintained at the public expense, but when the war terminated were thrown on their respective parishes, and principally on the agricultural parishes, for support, without that demand for additional labour in those parishes by which they might have supported themselves.

The ministers of the country then perceived that the agriculture of the country must have been utterly ruined, if the constant importation of foreign corn had been allowed to complete its distress; and the policy of the old law was in some degree restored and regulated by the acts

of 1813, and 1815, which still form the law of the country, generally forbidding the importation of foreign produce for home consumption, unless the prices should rise to a height indicating scarcity, and warranting apprehension of famine.

With this restoration of the ancient policy, the prices of corn have generally fallen. They have constantly been considerably below, sometimes very considerably below, what was considered in 1813 as threatening famine: but notwithstanding this fall in price, the weakness of the ministers of the crown has induced them to prevail on parliament to suffer temporary infractions of the law.

The restoration of the ancient law would probably have gradually restored the capital employed in agriculture, which had been greatly reduced, in proportion to the extent of cultivation. But that capital is still insufficient for the proper culture of the land, though, notwithstanding this misfortune, the produce of the country has been of late such as to show the beneficial effects of the restoration of the ancient policy of the Corn Laws, which are now the object of clamour.

As soon as the agriculturists were relieved from the pressure of immense importations of foreign corn, the produce of the country was such as often to reduce the price of wheat below a fair remuneration to the grower: and it has since

generally been at a price far below that which prevailed during the great importations of foreign corn. Looking at the accounts presented to parliament, it will be seen, that when the Corn Laws were permitted to operate undisturbed, the prices were generally, if not always, comparatively low.

The present prices, of wheat especially, are at least as low as the charges on agriculture will allow. To reduce them lower, and to keep them constantly thus reduced, whatever may be the effect of seasons rendering the produce of one year less than half the produce of another, must gradually reduce the capital employed in cultivation, and consequently the produce of cultivation, so much, that a constant and large importation of foreign corn must be the consequence; whilst the importation of other articles (of wool especially) has reduced the profit of the corn-grower from the cultivation of his land, preparatory to the production of corn, and essential to its plentiful production. The stock of wool on hand is such as to render it an incumbrance instead of a profit in many parts of the country; and thus a portion of that capital which would otherwise have been employed in cultivation, is lying dead in the hands of the farmers, and, in effect, at present useless.

In estimating the prices of all articles, their exchangeable value is that by which high or low

prices *ought* to be calculated. Comparing the exchangeable value of corn at this time with the articles which may be purchased with it, and considering the amount of the various taxes and charges to which the production of corn is subject, and the loss which the corn-grower has sustained by the enormous importation of wool and other produce, (which formerly constituted part of his profit from the production of corn,) the price of corn, generally, is now certainly as low as it can generally be, without reducing the condition of all those engaged in the production of corn far below the condition in which they were a century ago. To reduce them lower will make them the mere slaves of manufactures and trade; and must destroy the capital which yet remains employed in agriculture, and consequently destroy the produce of agriculture, and render this country constantly dependent for its subsistence on foreign supply.

This reduction of the profits of agriculture to nothing, and the consequent destruction of the capital employed in it, are the manifest objects of the economists, though they dare not yet openly avow those objects in their full extent.

They have stated, as a fundamental doctrine of political economy, that the profits of manufacture and trade ought to be as high as possible, and the profits of agriculture as low as possible; and that the capital employed in manufacture and trade

ought to be increased, by accumulation of profit, to the greatest possible extent: but, as they assert that the profit of agriculture ought to be reduced as low as possible, they consequently assert that the capital employed in agriculture ought to be kept down by reduction of profit.

Is not this saying, in other words, that those whose industry and capital are employed in agriculture, are to be the slaves of manufacture and trade; to expend money, to endure labour, to incur great hazard, for the benefit of those engaged in manufacture and trade, who are thus to become, in effect, the lords of the soil and all its produce; and that, for their benefit only, that soil is to be cultivated?

Manufacturers and traders have long arrogated to themselves a great superiority of profit in the wages of labour as well as in the employment of capital. The wages of every working manufacturer, and every artificer, are generally double, often treble, the ordinary wages of a labourer in agriculture. The tailor, the shoemaker, and many others, employed as journeymen in various trades, never enduring, in their occupations, the slightest effect of inclement weather, gain, by working three days only in the week, twice as much for wages as the labourer in agriculture can gain by six days of much harder labour, exposed to the pelting of the pitiless storm in winter, and to the burning heat of the mid-day sun in sum-

mer. The shopkeeper, who can fill his shelves with goods purchased on credit, and who may therefore begin his business almost without capital, expects to make a greater profit on the sale of those goods, obtained on credit, than the farmer can procure by the employment of a large capital, much labour, with much hazard, and often compelled to give credit on the sale of his corn, but obtaining, for the articles which he must have for the purposes of his business, no credit, except from his landlord, for the use of the land which he cultivates, and the buildings and other improvements by which that land has been made capable of convenient cultivation.

And what has been the profit which a farmer has ever made; beginning his business with a capital exceeding the capital with which many a manufacturer has set out, who has finally acquired, by the accumulation of his profits, an immense fortune?

Millions have been acquired by manufacturers and traders, who began the world with nothing; whilst the profits of the business of a farmer, who must, in his outset, have a capital proportioned to the land which he cultivates, have rarely raised him and his family above the condition in which he began his business; a condition on which the more fortunate manufacturer or trader looks down with contempt.

Such is the condition of those who are en-

gaged in the cultivation of land as farmers,and as labourers. But what will be their condition if the theories of the economists shall prevail; and under the influence of the measures which those theorists recommend, the cultivators of the soil shall be reduced to the condition of Helots.

Can such a revolution take place without convulsion? Will those interested in the cultivation of the soil, as land-owners, submit to the annihilation of their property by the ruin of those by whose capital and industry it has been made productive; and by the loss of all which they, or their predecessors, have expended to make that soil fit for and capable of production; expenditure for which no return has ever been made in the shape of rent, equal to the gains of manufacturers and traders on their adventures, often without capital, and on mere credit? Will they submit to poverty, under the imperial rule of manufacturers and traders? Will the farmers, and their labourers, submit to further degradation? Will they submit to be treated as the scum of the earth, made only to toil for the benefit of traders and manufacturers? Yet such is the object of the economists.

And what would the manufacturers and traders gain by the destruction of landed property, reducing to poverty the owners and cultivators of land? Would they not lose the beneficial custom of a large portion of those who

have been their best customers, if their intended victims should quietly submit?

But should those intended victims not submit to such tyranny, what must be the event of the struggle which must follow? Would not the confusion which must ensue, reduce all to poverty and misery; except, perhaps, such choice spirits as may be able to ride in the whirlwind and direct the storm, and who may establish their own power in the ruin of their country?

Not content with endeavouring to destroy, by the importation of foreign produce, the profit of all engaged in the cultivation of the soil, the economists have devised a scheme for the payment of the national debt, which has evidently for its object the destruction of all who are interested in that cultivation. The absurdity of the proposition, even for the purposes for which it has been offered, would render it unworthy of observation, if it did not demonstrate the eagerness with which the economists pursue their cry: "The landed interest must be put down!"

The wars in which this country has been engaged, and the necessity for loans of money to support the expences of those wars, has given to those who direct the monied interest, an influence to which the ministers of the country have been often compelled to submit.

It is not the possession of money, but the trade in money, which constitutes, what is now

called, the monied interest, or the capitalists; persons ready to engage, with their capital, or by the credit which they obtain, serving the purpose of capital, in any adventure by which gain can be made, or by which adventurers may hope that gain may be made, beyond the ordinary profit of money. The great mass of money proprietors, whose property is invested in private or public securities, is generally quiescent: but those who are distinguished by the appellation of capitalists, are of a different character: they are never at rest; and they employ their means, whether consisting of real capital, or of credit, continually in attempting to gain, by various speculations, profits which the quiet holders of money, invested in public or private loans, cannot hope to obtain.

Many of these capitalists, as they are called, are directly or indirectly traders in every thing, as well as money; and they have an insatiable desire of obtaining gain, far beyond that gain which generally falls within the hopes of those who may be deemed the regular and sober traders of the country.

But desire of extraordinary gains often finds its way amongst traders also, and is excited and nourished by the capitalists, who often use the traders as their means of acquiring extravagant gains.

The increase of the public funds of this coun-

try, the increase of the public funds of other countries, and the temptation to adventure in those funds; in which fluctuations in prices, (often artfully created,) and the high rate of profit which fluctuations sometimes produce, have led to a species of gambling in those funds, and to a general gambling in money transactions and in trade, far more prejudicial to public morals than the gaming with cards or dice in professional gaming-houses, ever has been to private morals; more pernicious from its enormous extent, and from the numbers injured by it; and most pernicious, as it has not yet suffered all that reproach which has been long bestowed on the gambler at cards or dice, whether the dupe or the rogue.

The ordinary trade of the country for home consumption, the manufactures for home consumption, especially the manufactures of home produce, and the internal trade for home consumption, afford comparatively a narrow field for speculation. The importation of foreign articles is the great source from which the speculators draw their profits.

Thus the importation of foreign wool has been the object of extensive speculation; and the amount imported in one year, without reducing the price of woollen manufactures to the consumer, has deeply injured another manufacture, the produce of home-grown wool; and many of

those engaged in that manufacture have by the importation of foreign wool, been deprived of all profit from the capital which they had engaged in their business, and from the skill and industry which they had employed in it.

The internal trade in butter, cheese, tallow, hides, and skins, and other articles, the produce of the culture of the country, did not afford great means of speculation whilst confined to the home produce; but the importation of foreign articles of the same description has opened another source of profit to the speculators, and has been destructive of the accustomed profit of the home producer.

Having succeeded thus far in extending the field of speculation, to the injury, and in many cases to the ruin, of those, who, under the faith of the laws, had embarked their capitals in the cultivation of the soil of their country, and laid the foundation for that trade, by means of which these gambling speculations have been effected; the speculators now seek to extend their operations to the most important object of home production, the corn of the country.

The value of the annual production and consumption of corn in this country, estimated at the average prices of the last ten or twelve years, must be immense. And it is now proposed to make it a subject of continual and most extensive speculation, by allowing the importation of

foreign corn; and to aid speculation by the full assistance of that great encourager of all speculation, the warehouseing system; to encourage a vast system of gambling in an article on which the subsistence of the population of this country depends; and on the production of which, and on the profit arising from its production, the wealth or poverty of a large proportion of that population also depends.

The effect of considerable importation of foreign corn must be to take money to the amount of several millions of pounds sterling out of the pockets of the cultivators of the soil of this country, and out of the pockets of those interested in the cultivation of that soil; and to put the same millions of pounds sterling, partly into the pockets of the rest of the population of this country who are consumers of corn, rich as well as poor, partly into the pockets of the cultivators of foreign countries, and the merchants and various other persons belonging to foreign countries. But can it be denied that, as far as the trade in corn can be made the subject of speculation, which undoubtedly it may to a great extent, the further consequence must not be to put other part of the money thus proposed to be taken from the cultivators of the soil of this country, and those interested in that cultivation, into the pockets of the speculators in corn: and not merely the speculators in foreign

corn, but in British corn also. For the importation of foreign corn will manifestly extend the means of speculation in corn (a speculation now in some degree practiced in British corn) to the whole consumption of the country in the article of corn. Here will indeed be a rich harvest for speculation.

That the trade in corn, home-grown and foreign, must in consequence of unlimited importation of foreign corn, be a great object of speculation, cannot admit of doubt. The speculations in wool, in tallow, and other articles of home-produce which have followed the unlimited importation of foreign articles of the same description, demonstrate, that extensive speculation in corn must be the result of unlimited importation of foreign corn.

The trade in home-grown corn has already become, in a degree, an object of speculation; and the average prices of the great markets have been, at different times, raised or lowered, in consequence of such speculations. The principal supply of those markets cannot be directly from the corn-grower to the consumer, or even from the corn-grower to the miller, and from the miller to the consumer; and consequently, corn-dealers have been established, in great numbers, in various parts of the country, whose profits form part of the price paid by the consumer.

But as long as the internal trade in corn shall be confined wholly, or in a great degree, to home-grown corn, speculation in corn must be necessarily confined within comparatively narrow limits. The quantity produced in the country must limit the supply: that quantity generally depends on seasons; and the effect of each season on the crops is, generally, easily ascertained, and easily circulated through the country.

The importation of foreign corn, aided by the warehousing system, will defeat all calculation of proportion between demand and supply, founded on the produce of the country, when the supply shall no longer depend on the produce of the country: and the prices of corn in the British markets will depend on the crops in foreign countries, and on the dealings of the speculators in foreign corn?

Who will gain by this?

If the country produces sufficient corn for its consumption, all the profit derived from the sale of that corn to the consumers, whatever may be its price, is profit to some persons in this country. But if a quantity of foreign corn is imported, and sold to the consumers of corn, and in consequence, a quantity of home-grown corn remains useless in the hands of the growers, and finally perishes, (and such has been the effect of the importation of foreign wool,) the country must pay to the people of some other country

the price there paid for such corn, and the expence of bringing such corn to this country; and whatever that price and that expence may be, this country must lose so much by importing foreign corn, instead of consuming its own produce. Such loss this country has actually sustained by the importation of foreign wool; and what must be the effect with respect to the production of wool in this country, if the importation of foreign wool shall be continued? The breeders of the animals which have produced that wool, then become useless, must cease to breed the same number of those animals, and the feeders of those animals must cease to feed the same number—unless the price which was paid for their wool shall be added to the price for the carcase.

Should corn share the fate of wool, what will be the consequence to this country? The landed interest must be destroyed, and the adventurers in speculation must be triumphant.

It has been the principal object of the preceding pages to call the attention of the public to the deliberate consideration of the Resolutions offered to the House of Lords in the last session of parliament, in consequence of the attempt then made to abrogate the existing Corn Laws, and involving many most important subjects, affecting the best interests of the country, but which it was not thought fit, in that place, to consider

with the serious attention which the subject appeared to require. In the public mind they at that time attracted a considerable degree of attention; and it had been expected that deliberate discussion of the subjects which they embraced would have followed.

Though the measure which first induced the framing of those Resolutions was abandoned, the language of ministers threatened that a similar measure would be brought forward in the session now approaching. That the people of this country may have before them the grounds on which the abandoned measure was opposed in the last session, it has been thought fit, in this form, to offer to them the Resolutions, and the Speech made to induce full deliberation on the subjects to which those Resolutions applied; with the addition of such observations as may lead to that discussion elsewhere, which was avoided where it would have been most useful, if fairly conducted.

One strong motive for this publication has been, the indecent attempts made to attribute to the opposers of the measure then depending, but afterwards unaccountably abandoned, the most dishonourable motives for that opposition: to show, in contradiction to those base insinuations, that it was a sense of the injury which the opposers of the measure conceived was about to be inflicted on their country, involving

its most important interests, and threatening in result the destruction of all which had hitherto been the dearest object of British affection, which induced that opposition by so many persons, high in rank, high in public estimation, and possessing a large share of that property which they conceived the measure proposed sought to destroy, with that constitution which they considered as resting on the foundation of such property, and of which they had been constituted, by the forms of that constitution, an important safeguard.

To demonstrate the danger of the measure proposed was the object of the Resolutions. Whether such was their object, or whether they were the mere effusion of faction, in opposition to those who sought the good of the country, let the public judge.

RESOLUTIONS,

MOVED IN THE HOUSE OF LORDS

On the 29th of March, 1827,

1st. THAT the wealth and strength of Great Britain originated in the cultivation of its soil, and must always be dependent on that cultivation, whatever other advantages the country may possess.

2d. That the cultivation of the soil of a country is a trade and manufacture, and is so far the most important trade and manufacture in every country, as every other trade and manufacture must depend upon it.

3d. That though the production of Corn for the food of man is, in Great Britain, one of the most important objects of cultivation, yet the means of obtaining the production of Corn, the quantity produced, and the profit to be derived by the cultivator from the production, are all dependent on many other objects of production, and especially on the production of animals and of food for animals, and on the further produce or other benefit derived from such animals; and the general profit of the cultivator is the result of the combination of all the several articles so produced, each article contributing to the more profitable production of the rest, the amount of the whole production at the same time greatly depending on the capital and skill employed in fitting the land for the purposes of cultivation, and on the capital and skill em-

ployed by the cultivator; and it is the combined effect of all these operating causes which gives plenty from cultivation, and renders cultivation profitable.

4th. That the laws now in force regulating the importation of Foreign Corn are founded on the principles expressed in the foregoing Resolutions, having in view the extension and improvement of the cultivation of the country, the increase of its productions, and insuring to the improvers and cultivators of the country the just reward for their expenditure and labour, as expressly acknowledged in the Preamble to the Act of the 15th year of the reign of King Charles the Second, intituled, "An "Act for the Encouragement of Trade," in these words: —"Forasmuch as the encouragement of tillage ought to "be in an especial manner regarded and endeavoured; "and the surest and effectuallest means of promoting "and advancing any Trade, Occupation, or Employ- "ment, being by rendering it profitable to the Users "thereof; and great Quantities of Land within this "Kingdom for the present lying in a manner waste, and "yielding little, which might thereby be improved to "considerable profit and advantage, (if sufficient encou- "ragement were given for the laying out of cost and la- "bour on the same,) and thereby much more Corn pro- "duced, great Numbers of People, Horses, and Cattle "employed, and other Lands also rendered more valu- "able."

5th. That under the encouragement proposed by the said Act of the 15th of King Charles the Second, and many other Acts since made, in conformity to the principle expressed in the Preamble to that Act, great quantities of land, which were in the 15th of King Charles the Second lying waste and yielding little, have been improved with great cost and labour, and much more Corn has been produced, and great numbers of people, horses,

and cattle have been employed, and a population, very greatly increased in number, and consuming a much greater quantity of Corn in proportion to their number, has been provided with food by means of the improvements so made, and the produce of the country has thereby become equal to provide for such increased population, both with Corn and other food, in great abundance; unless, by the dispensation of Providence, the extraordinary inclemency of a particular season should happen to render the production of that season considerably less than the production of an ordinary season.

6th. That under the apprehension of the possible occurrence of such an extraordinary season, and the consequent failure of crops, provision has been made in the said Act of the 15th of Charles the Second, and in all the subsequent Acts respecting the importation of Foreign Corn, to prevent the scarcity which might be produced by inclement seasons; the importation of Foreign Corn being allowed whenever the prices of Home-grown Corn, estimated according to the value of money at the several times of passing such Acts respectively, should indicate so great a failure of crops, as to raise just apprehensions that the produce of the country might be insufficient for the consumption of its inhabitants; but at the same time allowing to the Home Growers of Corn the benefit of a rise in the prices of Corn, corresponding with the deficiency in the quantity produced; and thereby compensating to them, by increase of price, the loss which they would otherwise have suffered, by deficiency in their crops, whenever that deficiency did not, by an extraordinary rise in price, indicate the danger of distressing scarcity.

7th. That, considering the present value of money, and the great rise of prices of almost every article of consumption, and the great increase of burthens im-

posed on the people of Great Britain, and especially on the produce of the soil; the prices of 60*s.* for the Quarter of Wheat, of 32*s.* for the Quarter of Barley, of 24*s.* for the Quarter of Oats, and of 36*s.* for the Quarter of Rye, Peas, and Beans, cannot be considered as indicating such a deficiency in the quantities of the same different sorts of Grain produced in the country, as to warrant any apprehension of scarcity; and, on the contrary, those prices are not more than sufficient to remunerate the Corn Growers for deficiency of crops in ordinary years, as they are very little above the prices in very plentiful years, when the prices are always lower than fair remunerating prices in an ordinary year, as the supply in such very plentiful years greatly exceeds the demand, and the surplus forms part of the consumption of the succeeding year, and often at an advanced price.

8th. That the continual and great variations in the prices of different sorts of Grain during the course of above 150 years, of which there is clear evidence, demonstrate, that assuming *certain prices* for each or any species of Grain, as the prices, or nearly the prices, for which such Grain may be sold with advantage to the producer in every year, is an attempt to do that which is impossible; and, on the contrary, that the fair prices of each year must depend on the amount of the produce of each year, which may vary so greatly from year to year as to make the fair prices in one year greatly exceed or greatly fall short of the fair prices in another year.

9th. That to allow the importation of Foreign Wheat into Great Britain at all times, without payment of any duty on importation, and to permit such Wheat afterwards at any time to be entered for sale on payment of a duty of 20*s.* only, whenever the average price of Wheat, taken weekly in certain districts, shall amount to 60*s.*,

and to impose a scale of duties increasing as the average price should fall below 60*s.*, and diminishing as the average price should exceed 60*s.*, would be to fix indirectly the price of 60*s.* for the Quarter of Wheat, as the highest price for which Wheat should be sold, even in the most unfavourable years; inasmuch as Foreign Wheat may generally be obtained at so low a price, that on payment of a duty of 20*s.* only it can be brought into the market for sale, with considerable profit, at a price below 60*s.* the Quarter; and if a proposition to that effect should be made law, Wheat produced in Great Britain can never be sold at a higher price than 60*s.* the Quarter; and the effect of such a law must be to keep the price of Wheat at all times *under* 60*s.* the Quarter, whatever failure may happen in the home-grown crops.

10th. That in like manner the importation of Barley, Oats, and other sorts of Grain, under the same circumstances, to be entered for home consumption on payment only of several duties bearing a like proportion to the prices of those articles as before mentioned, would operate indirectly as a law limiting the prices of such several articles at the sums proposed as the average prices on which the rise and fall of duties should take place; and would compel the sale of Barley, Oats, and such several sorts of grain, always at prices rather under than above the medium prices at which such duties should take place.

11th. That limiting the prices of Wheat, Barley, Oats, and other sorts of Grain to the several prices before mentioned, at all times, however unfavourable the seasons might prove, must have the effect of compelling the growers of such articles to sell the same at great loss whenever unfavourable seasons may cause any material failure of their crops; and by taking from them all profit, must gradually deprive them of the means of cultivation, and render the tillage lands of Great Britain gradually

less and less productive, without further diminishing the actual price of Corn; until, by the ruin of the agriculture of the country, the cultivated land should become so far unproductive as to be very unequal to the support of its population; and then, unless foreign production should be imported to an enormous amount, the deficiency of supply to answer the demand would again raise the price of corn, and the country would at the same time pay a high price for the corn consumed in it, though in great part Foreign Corn, and would become dependent on and tributary to other countries for its daily bread.

12th. That the idea of fixing a certain or nearly a certain price at all times for Grain of any description, in any country, with any regard to the welfare of the cultivators of the soil, is extravagant and absurd, as demonstrated by the experience of all countries, and by the evidence before the House of the great variation from year to year, and from month to month, of the prices of all sorts of grain in this country, and in every other country with respect to which evidence has been procured; the prices varying in many instances almost in the proportion of two to one, and seldom in any two successive years bearing nearly the same proportion; and as the amount of the produce in every country, of each year, must vary from the amount of the produce of precedent and subsequent years, according to the season of each year, so the price must vary to render the cultivation profitable; and that variation must be greatest where cultivation is most expensive or most artificially conducted, and where the people are most burthened with taxes and other charges; and the sale of Corn at a regulated price in any country can only be effected by the introduction of foreign Corn, to compel the cultivator to sell his Corn at less than the cost of its production; and this attempt, by ruining the cultivators, must finally tend to raise rather than to reduce the ordinary price of Corn.

13th. That the foreign Corn hitherto imported has always been, and the foreign Corn hereafter to be imported probably will always be, paid for in money, and not by a corresponding export of British manufactures, or other commodities, to the places from which such Corn has been or shall be brought.

14th. That at all times when the quantity of Wheat produced in Great Britain, together with the Wheat imported from Ireland, shall be equal to the demand for consumption in Great Britain, the importation of foreign Wheat in addition to that quantity must be useless; or must have the effect, either of excluding from the market and rendering useless an equal quantity of home-grown Wheat and Irish Wheat, or a quantity of Wheat consisting of foreign and home-grown and Irish Wheat, equal to the quantity of the foreign Wheat imported: and that quantity must remain in store, without any other effect than that, by occasioning a glut in the market, the importation of foreign Wheat might reduce the prices both of foreign and home-grown and Irish Wheat so low, as to discourage the growth of Wheat both in Great Britain and Ireland in succeeding years, and thereby reduce the quantity of land cultivated both in Great Britain and Ireland.

15th. That in like manner the importation of other sorts of foreign Grain, whilst the production of the country with the assistance of Ireland should be equal to the demand, must have the like pernicious effect.

16th. That if a million of Quarters of foreign Wheat should be purchased in the Baltic, or elsewhere, at the price of 26*s.* the quarter, and paid for in money, and not by a corresponding export of British manufactures or other commodities, and afterwards sold in the home market at 60*s.* the quarter, having paid a duty of 20*s.*

the quarter, and if an equal quantity of home-grown Wheat and Irish Wheat should be thereby excluded from the home market, the sum of three millions of pounds sterling, which would have been received by the home growers of Great Britain and Ireland for the same quantity of Wheat, would be transferred to others: namely, £1,300,000 would be transferred to foreigners for the price paid in money for such foreign Wheat, one million would be paid to the public revenue for duty, and £700,000 would be paid to individuals of various descriptions for expenses of import and other expenses, and for profits to the speculators in the purchase of such foreign Wheat.

17th. That if (of which there is no prospect) such million of quarters should be distinctly paid for by the export from Great Britain of manufactures or other commodities, and not in money, yet the value of such exports would be only to the amount of £1,300,000, and the clear profit derived to manufacturers and traders from such exports would be of very small amount; whereas the loss to the home growers of Wheat would still amount to three millions sterling, though the public revenue would gain a million sterling by a tax really paid by the home growers of Corn, already burthened with an enormous disproportion of the public charges: and in like manner, by the importation of foreign Barley, Oats, and other Grain, whether purchased with money or with commodities exported, the loss to the home growers of those articles would be equal to the amount of the whole quantity of foreign Corn sold in the market, whilst the gain to the manufacturers, if any, would be of trifling amount; and the government would be the principal gainer, by a new tax thus imposed, in effect, on the home growers.

18th. That the state of the currency of the country must at all times affect the real prices of all commodities

estimated at the nominal value of such currency, and may materially affect the profit derived from the importation of Foreign Corn, and of all articles imported from Foreign countries, and the profit to be derived from the importation of Foreign Corn may become enormous, by reason of the state of the currency of this country, and the rate of exchange between this country and the country where such Corn shall be purchased, which may give rise to the most extravagant speculations in Foreign Corn to be imported into Great Britain.

19th. That the effect of the importation of Foreign Corn at duties so low as not to operate as a restriction on importation, may be judged of by the effect of the importation of Foreign Wool, by which the price of the home-grown Wool, and especially of short Wool, has been greatly reduced, and great quantities of such Wool remain in the hands of the growers, driven out of the market by the importation of Foreign Wool; and the importation has greatly increased since the reduction of the duty, whilst the export of Woollen Manufactures has decreased instead of being increased: so that the home growers of short Wool are now suffering an annual loss of great amount, great part of which amount has been paid to Foreigners for Foreign Wool, without any adequate benefit to this country; and further loss has been sustained by the importation of Foreign Tallow, Hides, Skins, and other articles.

20th. That by importation of Foreign Wool, Tallow, Hides, and Skins, and of other commodities, the produce of agriculture, the cultivation of the country, and all persons interested in the lands of the kingdom, and particularly the cultivators of tillage land, have suffered great injury, inasmuch as the profit derived from those articles enable them to adopt that system of

husbandry which has so much increased the productive powers of tillage land, by a regulated course of crops, to which the profits arising from Wool, Tallow, Hides, Skins, and other offals of animals is essential; and the price of Meat, as well as the price of Corn, must eventually be greatly affected, by depriving the cultivators both of tillage-lands and of grass-lands of those profits, which are important parts of the profits derived from the breeding and feeding of animals bred and fed for the purpose of producing meat for the food of man.

21st. That much as the island of Great Britain may suffer from any material alteration of the existing Corn Laws, Ireland will probably suffer more; inasmuch as the Corn Market of Great Britain is now at all times open to Ireland, and the importation of Corn from Ireland has been (since the free intercourse has been allowed) continually increasing, and if not obstructed by Foreign competition, the cultivation of Ireland must continually increase, so as to enable that country to supply any deficiency which the most inclement season may occasion in Great Britain, and render the importation of Foreign Corn, at any time, unnecessary; and the constant importation of Foreign Corn, at the rates of duties before mentioned, must be a death-blow to the rising cultivation of Ireland.

22d. That the employment of capital is essentially necessary to the proper cultivation of any country; but the importation of Foreign produce has already destroyed a large proportion of the capital which was employed in the cultivation of Great Britain, and the constant importation of Foreign Corn will greatly reduce the capital still employed; and such importation must prevent that increase of agricultural capital in Ireland, which is essential to raise that country to the high state of cultivation of which it is capable; and the same causes will

prevent the improvement of vast tracts of land in Great Britain, which are still capable of great improvement.

23d. That the constitution of the government of the United Kingdom in all its parts, and the symmetry and security of the whole, are founded and depend upon landed property, and cannot subsist, in their present form, if the value of such property shall be materially diminished, and its due weight in the government of the country shall be thereby destroyed; and any material injury to that property, by destroying the just balance of the constitution, must lead to the overthrow of the existing form of government, and the substitution of some new form of government, unless the misery of general confusion shall bring the country back to that form which has produced its happiness and prosperity for so many years.

24th. That the experience of many years has proved the wisdom of those laws which have been founded on the system adopted on the restoration of Charles the Second, and on which the existing laws regulating the importation of Foreign Corn were founded: that adherence to that system in the reign of Charles the Second restored the cultivation of the country, injured by the disturbances which had for some time before prevailed, and gradually brought into cultivation large tracts of uncultivated land, and improved the general practice of agriculture, so as to supply a continually increasing population: That upon every departure from that system, and upon every infringement of the laws by which it had been maintained, though justified at the time by the apprehension of want, the prices of Corn uniformly rose, and at some times amounted to nearly double the present prices, and constantly fell when that system was again allowed to have operation; and the present prices, compared with the prices which were paid immediately before and for some

time after the fifteenth of Charles the Second, especially considering the very heavy burthens since imposed, and the value of money in other transactions, are much lower than the prices then paid, which demonstrates the benefit gained to the country by the adoption of that system, which it is now proposed first to qualify, and finally to abandon, by the general introduction of a system of free trade.

25th. That a general system of free trade is incompatible with the present condition of the world, and particularly with the condition of this country, burthened with enormous taxes and charges of various descriptions, and loaded with an enormous National Debt, which renders all the rest of the inhabitants of the country tributaries to the public creditors, who are maintained in idleness by the industry and at the charge of others, through the medium of burthens imposed on many articles of production, and most especially the productions of cultivated land, which are loaded with charges far exceeding the burthens imposed on other productions, and cannot therefore be brought into the market on equal terms with the productions of countries not so burthened; and the unequal burthens thus imposed on cultivated land could not now be sustained, if a portion of those burthens were not borne by the rest of the community, through the medium of the prices paid for the commodities raised by the cultivation of land.

26th. That a general system of free trade can only be founded upon the establishment of universal and constant peace, and universal and constant good-will of man to man, and is utterly inconsistent with the present condition of mankind, divided into various states, under various governments, founded on various and conflicting principles, jealous of and hostile to each other, and particularly jealous of and hostile to the internal and external

prosperity of this country, and its extended dominions in the eastern and western world, all of which are objects of the ambition of other nations, and for the protection and management of which it has hitherto been found expedient to maintain a large armed force, both naval and military, and other large establishments, creating a necessity for the continuance of a large portion of those heavy burthens with which this country is charged, even if its National Debt were annihilated.

The House having appointed the 15th of May for taking those Resolutions into consideration, Lord Redesdale moved the order of the day, and then addressed their Lordships to the following effect:

Having offered to the House, on the 29th of March last, certain resolutions respecting a subject which has much engaged your Lordships' attention, and greatly agitated the public mind, "The Importation of Foreign Corn;" and your Lordships having appointed this day for taking those Resolutions into your consideration, it is my duty to state to your Lordships my views on this subject, and my object in thus attempting to bring them under the consideration of the House, in the form which I have adopted.

In this mode of proceeding I had principally in view to induce your Lordships to consider,

separately, distinctly, and deliberately, the principles on which the laws regulating the importation of Foreign Corn have from time to time been framed; the effect of the laws founded on those principles; and the probable effect of departure from those principles in framing any new law on the subject: what good might be effected, what evil might ensue, and what might be the balance of good or evil in abandoning those principles, and adopting a new system, or in adhering to that which I conceived had contributed importantly to the prosperity and happiness of the country.

The Noble Lord who was at the head of his Majesty's Government, did, early in the present session of parliament, propose to bring forward distinct Resolutions on the subject of the existing Corn Laws, and the alteration which he proposed to adopt. That noble Lord therefore conceived that the subject was of such importance to the public welfare, that it required to be considered and discussed with the greatest deliberation, and the most ample development of the principles on which the existing laws had been founded, and the effects which they had produced, before we should be called upon to consider the propriety of departing from those laws, and establishing a new system founded on different principles.

His unfortunate illness has deprived his coun-

try of his services, and prevented his accomplishing what he had thus proposed to undertake: and no one * of his colleagues in office, in this House, has ventured to attempt the task which he had imposed on himself—conscious, I must presume, that it was his duty on offering to the consideration of the House, and of the public at large, so momentous a change in the policy of the country, to demonstrate that the policy which had been for ages adopted and generally pursued, was erroneous; and that a different policy, founded on different principles, ought to be established.

It is much to be lamented that the House and the country had not the benefit of a full display of the noble Lord's abilities, or of the abilities of any of his noble colleagues, in opening, for our consideration, the principles on which it is proposed to subvert the system which had been so long generally acted upon by the legislature, and the departure from which had generally been the result of temporary circumstances: a system which had been abandoned at an unfortunate

* Perhaps the persons on whom this duty might have been considered as naturally falling, in consequence of the noble lord's illness, though they submitted to the principal minister in yielding to his opinions, may have rather submitted to those opinions in deference to him, or to others, than adopted them, or perceived with clearness all the grounds on which he, or others, may have thought fit to adopt them.

period, and which had been so recently again approved by the legislature, and made the foundation of laws recently enacted, but now sought to be repealed.

In consequence of this failure of that development of new principles which had been expected, the feelings of the people were greatly excited; petitions were presented to the House from all parts, every man suggesting his own opinions and feelings; and on the presenting of almost every one of these petitions, the House was engaged in desultory conversations, leading to no clear and direct conclusions.

To put an end to this inconvenient mode of discussing, or rather of talking upon, a subject of so much importance, the propriety of offering to the House distinct grounds of debate, in the form of Resolutions applicable to the subject, was suggested; * and it was hoped that a noble Earl, well qualified to give assistance to the House on every subject, would have undertaken the task.

Understanding that that noble Lord had de-

* It is the duty of the ministers of the crown, proposing a new measure of policy, to state to the two houses of parliament the grounds on which the ancient policy of the country should be abandoned. If this duty is not performed, the house may adopt the measure proposed, without that information which they ought to have received. Much of information is in the power of ministers, which no individual can easily obtain.

clined it, I was urged, and at length induced, to propose to the House the Resolutions now before you—Resolutions rather hastily prepared, but which, however imperfect, it was conceived might lead to more ample and more regular discussion of the subject; and their circulation, during the recess, has already had, in some degree, that effect.*

It has been objected that these Resolutions involve abstract principles; and that, supposing those principles to be abstractedly just, it might not be convenient to adopt resolutions founded upon them, as pledging the House to any distinct measures of legislation.

I cannot consider the adoption of Resolutions founded on abstract principles as necessarily pledging the House to any distinct measure of legislation. Such principles must, at all times, be the general guide of the legislature; but their application to a particular subject must depend on circumstances, applicable at the time to that subject. I am not, however, so anxious to procure a distinct vote of assent to all or any of the Resolutions proposed, as to induce your Lordships

* It may be said, that the proposer of these Resolutions was not, from the habits of his life, very well qualified to propose Resolutions upon a subject of such political importance. The observation may be just; but when those best qualified shrink from the performance of their duty, inferior men may be compelled, by necessity, to discharge that which is a duty constitutionally imposed on every member of the legislature.

to give the subject to which those Resolutions apply your full consideration, before you enter into debates on the particular bill to which they may be directly applied in the ordinary course of proceedings on bills originating in the other House of Parliament; and particularly, to consider how far the abstract principles involved in the Resolutions are generally just; and, if just in the abstract, how far it is expedient to depart from those principles by adopting the measure proposed, and what are the grounds of expediency which may warrant the departure from those principles.

A debate on the principle of the bill to which I have alluded, might, perhaps, embrace all that is offered to your consideration in the proposed Resolutions; but not in the same distinct shape, and without the assistance of the printed copy now before you, which it has been in the power of every member previously to consider in all its parts, in his closet, at his leisure, referring to the several accounts, and other information, laid before the House, with an attention and cool deliberation utterly inconsistent with the hurry of a debate.

An advantage has been already gained, by the attention to this important subject excited in the public at large, thus called upon to consider it on principles abstracted from particular interests, particular feelings, and particular pre-

judices: and there has consequently been a strong manifestation of public opinion, the result of mature consideration, referring to, and guided by abstract principles, which ought always to be the chief guide of public opinion, assisted by that experience which the people at large are generally capable of applying justly, if left to the force of their own minds, and not misled by those whose interests or whose passions may incline them to mislead the public opinion in conformity to their own objects. The measure now in progress has been tried in the public mind by the principles suggested in the Resolutions; and if the measure is good it will not have suffered by the trial. It has received more deliberate consideration; and though, on a hasty view of its provisions, the bill may not appear to depart entirely from the principles on which the subsisting laws have been founded, that deliberate consideration may have discovered that, indirectly at least, and in a considerable degree, it departs from those principles; and that it suggests a principle, leading, not only to free trade in corn, but to free trade in every other article produced in the country, naturally, or by any species of manufacture, art, or labour: that the measure proposed is, in truth, founded on the speculations of certain modern political economists, which appear to me, and I believe to many others, utterly inconsistent with the nature of man, as man has ever been, and certainly incon-

sistent with the present condition of the most civilized parts of the world; and particularly with the condition of this country, burdened with a great national debt, and under the necessity of maintaining the vast establishment which it now supports, without which, not only its trade, but all the sources of its wealth, security in the enjoyment of that wealth, and even its independence, may be seriously hazarded.

Strongly impressed with these views of the importance of the subject, and of the importance of considering it, first by the application of abstract principles to the subject generally, as affecting every country, and then by trying the proposed law as affecting this country, both by the application of those principles, and by whatever circumstances in the state of this country may render those principles, if abstractedly right, more or less applicable to this country, according to existing circumstances; I shall proceed first to offer each of the Resolutions proposed, distinctly to the consideration of the House; meaning, in conclusion, to move, not their immediate adoption, but that they should receive further consideration, by reference of the whole to a Committee of the whole House.

In this mode of proceeding, each Resolution may be distinctly and separately considered, and its application to the general subject shown, its truth discussed, its application to this country, at

this time, and under the peculiar circumstances of the country, and its importance as a guide in the adoption or rejection of the measures now in progress, may be fairly canvassed. Each proposition may be in itself just, and yet circumstances may be adduced to qualify its general or particular application. If there are such circumstances, they may be offered on discussion of the Resolution to which they may apply, and its import may be qualified accordingly; or the Resolution may be declared to be, though founded on just principles abstractedly considered, yet inapplicable to the present state of this country.

The proposition contained in the first Resolution which I have offered to the House, is,—

"That the wealth and strength of Great Britain originated in the cultivation of its soil, and must always be dependent on that cultivation, whatever other advantages the country may possess."

To the noble Lord whose unfortunate failure in health we all deplore, has been attributed the measure proposed to be adopted by the bill which is now offered for your consideration. Whether this has been truly asserted or not I will not stop to consider. But that noble Lord, in debate in this House, in the year 1820, stated, as an abstract principle on which he then relied, the very proposition expressed in the first Resolution which I have offered to your Lordships' consideration; and asserted "*that agriculture was the broad*

basis on which the whole superstructure of the national wealth and strength was founded." To that principle I cordially assented, and supported the noble Lord in measures founded upon it. But when he brought forward a measure founded on opposite principles, a measure which was in effect robbing Peter to give money to Paul, I called it, as I ever will call it, a bill of wrong and robbery, absurdly pretending motives of charity; giving to those whom he proposed to assist, from motives of charity, a few shillings, giving to himself and every rich man in the country as much, putting a large sum into the public treasury, and plundering those who then were holders of corn of half a million. I might therefore justly have called the measure a measure of folly as well as of wrong and robbery; and it was a measure of mere folly if not intended as the precursor of measures now brought forward, a prelude to *a new mode of filling an empty purse.* If, as the noble Earl asserted in 1820, agriculture is the broad basis on which the whole superstructure of the national wealth and strength is founded, can it be supposed that if the basis be sapped, the superstructure can long remain entire? Can the assertion of the noble Lord, thus solemnly made only seven years ago, be disputed? Is not its truth proved by the history of all the world? Where is the country, ever cultivated by man, whose wealth and strength did not originate in

the cultivation of the soil, and did not fail when that cultivation failed?

Why is the naturally fruitful tract in southern Syria, formerly the residence of a great and rich population, and full of large commercial cities, now a desert. War and oppressive government have destroyed the agriculture which supported its population and caused its riches; and rarely a solitary shepherd is now to be found amongst the ruins of its once stately edifices, erected by the wealth and luxury of its inhabitants.

Why have the vast sands of interior Africa never been covered by an industrious manufacturing and trading population? Why are they still without inhabitants? Because the soil has been deemed incapable of production by cultivation. Numerous caravans, induced by the hope of gain by trade, pass over the desert to transport their merchandise to other fruitful, and therefore inhabited and cultivated countries; but carrying with them, of necessity, provisions for their journey, the desert affording no means of subsistence. But could the art and labour of man pour over those almost immeasurable tracts of barren wild, another Nile, and could the soil thus be made fruitful; might not those now desolate plains, under the fostering care of a good government, be filled with an agricultural, manufacturing and trading people, rich and powerful?

One of our old "velvet-capped, square-toed,

penny-wise forefathers," (objects of ridicule to our modern political economists,) in a paper in the Spectator, suggests (with another view) the fanciful supposition, that the same mighty power which created this island, might raise out of the sea and join to Great Britain a tract of land of equal size, of equal natural fertility, but without inhabitants; and he then puts this question, "Would this add to the strength of the empire?" He answers, "No," for population is strength. But if such an addition to the size of Britain, miraculously raised, were, when so raised, inhabited and cultivated like Britain, the inhabitants of both forming one people, under one government, would not the wealth and strength of Britain be increased in proportion?

Look to the vast tract of land on the eastern coast of England, recovered from the waters, and now added, by the art of man, to the soil of England; formerly the resort of wild-fowl, but now covered with flocks, and herds, and fields of corn, and sustaining a numerous population. Those improvements (extending over nearly two millions of acres), have been the work of ages; but in later times when one great work, which now affords maintenance to thousands, was in contemplation, the citizens of London objected that the drainage would render wild-fowl scarce, and raise the price of that object of their luxury. Have not these improvements, by

the increase of production and increase of population which they have effected, added to the opulence of London itself, as well as to the general wealth and strength of the empire? Every improvement in the cultivation of any part of a country adds to the wealth and strength of the whole; and especially to the wealth of that spot to which, as the capital, all the wealth of the rest of the country is attracted; and which thus puts under contribution, for its own advantage, the wealth of all. Such is London; and it is foolish as well as ungrateful, when it seeks to deprive its tributaries of the means of paying their tribute. No spot in the empire is more interested in the cultivation of the country than London.

Cultivation adds, not only to the wealth and strength of a country, by the increased production of the soil, and the increase of population: it gives health to that population, by drawing off superfluous water, and dissipating noxious vapours, which, in uncultivated countries, are often injurious to man. It adds internal communication and the means of internal supply, by which manufactures and trade for home consumption are created and subsist; and they create in return the first market for the produce of the soil, beyond the wants of its cultivators. But the land must produce more than its cultivators require for their own use, before they can supply the wants of manufacturers and traders for

internal consumption; and manufacturers and traders can have no existence in a country, until such a surplus produce of the soil can be created. The United States of North America are proofs of both propositions.

What is the origin of foreign trade? The exchange of the produce of one country for the produce of other countries; thus giving to each that which it wants, and which it has not. But a country must *produce some article* more than its population requires for its own consumption, before it can make such an exchange: and that surplus must spring from the industry of its population, and consequently from its population.

What is the real source of the trade of the British empire, foreign and domestic? Its population; first employed in cultivation of the soil, in increasing its natural and artificial productions, in raising from the earth the minerals with which it abounds; and, as their numbers increased, employed also in manufactures, first for their own consumption, and then for exportation; and in conveying to foreign countries those productions and those manufactures which were not wanted for their own consumption, and bringing to their own country and carrying to other countries, articles of foreign produce which their industry and enterprise had acquired. Thus their wool, the produce of their soil and of their

industry, was the first great object of their foreign export trade.*

The naval strength of the country sprang from its home and foreign trade. Being an island, with numerous ports, and intersected by many navigable rivers, a large portion of its population was early employed in the transport, by navigation, of various commodities, from different parts of the island to other parts; and thus habituated to naval service, and employed in the construction of shipping, which this transport required. Hence sprung, first the home, and then the foreign trade by sea. The foreign trade, carried on by British seamen in British ships, produced a great accession of naval strength; and the legislature, sensible of the importance of that strength, gave it the encouragement of protecting laws; and, under that protection, British sailors, in British ships, have spread their fame over the world. But the narrow minds of our modern economists, finding that foreign ships and foreign seamen might be

* When the cultivation of their soil necessarily employed almost the whole of their population, the raw material, wool, was the great object of their export. When the increase of that population produced a surplus of labour, the export of wool was prohibited, to encourage the manufacture of woollens. But until cultivation had produced a population numerous beyond the necessities of cultivation, attempts to create that manufacture by prohibiting the export of wool must have been vain.

employed, for the purposes of trade, at a cheaper rate than British ships and British seamen, have proposed the abrogation of our navigation laws; threatening the destruction of the naval superiority of the country, to obtain cheap freights.

The mercenary views of traders leading them to employ foreign ships and foreign seamen, because they could be obtained at cheaper rates, having, towards the close of the once glorious, but afterwards unfortunate reign of Edward III., operated to reduce the naval force of the country, and leave its trade open to the depredations of its enemies, forced the parliament, in the reign of Richard II., to make provisions by law to compel the employment of British ships and British seamen; and by those provisions the naval power of the country was quickly restored.* The same sordid disposition to individual gain, without regard to national injury, which produced the law of Richard II., is now attempting to destroy the naval superiority of the country, together with its agriculture, to obtain cheap freights and cheap corn; without considering the injury which may be finally inflicted on the

* See the Act, the 5th of Richard II., and the proceedings stated in the Rolls of Parliament, which led to that Act; attributing the decay of the naval force of the country to the avarice of traders employing foreign ships and foreign seamen, because they could be obtained at cheaper rates.

Traders are too often influenced by the feelings which led Mr. Thomas Inkle to sell his Yarico and his child.

country by the reduction of its strength, or inquiring whether, in the result, corn will be cheaper, or trade benefited. The immediate gain of the individual is too often the sole object of a trader.

Is the protection of the country, the protection of its extensive and distant foreign possessions, its trade, extending to every quarter of the known world, so far as that protection may be afforded by naval power, to be left to foreign ships and foreign sailors, hired for the purpose?* and when our agricultural population shall be reduced by the ruin of our agriculture, and our naval power by the encouragement of foreign shipping, are we to depend for our internal defence, and

* Many passages in the history of the country show the importance of maintaining a British navy, manned by British seamen, always ready for the purposes both of offence and defence. When the late war broke out, the commerce of the country had spread its merchant-ships over the world; and it was necessary to provide, almost instantaneously, for their protection. The principal resource for this purpose was the home trade, which, according to law, ought to have been carried on in British shipping, of which three-fourths of the crews ought to have been British seamen. It was found that the law had not been strictly obeyed; and great difficulty occurred in manning ships for protection of our commerce. The late Earl of Liverpool, then at the head of the Board of Trade, alarmed by the intelligence, framed a bill, which passed into a law in the year 1794, though not to operate till a return of peace, (then thought a very distant event, as it proved to be,) further to enforce the old law; and to compel the employment, in the coasting trade, of British seamen only.

for the military guard of our external dependencies, on foreign troops, attached to the country only by their pay ?*

Under such circumstances, could this country maintain that wealth, that power, or even that independence, which it has so long enjoyed ?

The second resolution asserts, "That the cultivation of the soil is a trade and manufacture, upon which every other trade and manufacture must depend.†

* Let us remember that the "Condottieri," formerly employed by the contending Italian republics, were sometimes found at the beginning of a campaign on one side, and before the close on the other side, for better pay.

† This resolution has been controverted in a very extraordinary manner. It has been asked whether Genoa, Venice, and Holland were not places of great trade. So are London, Bristol, and Liverpool. But would any of them have been places of great trade, if England had remained an uncultivated waste? Did not the cultivation of the country precede their trade? and what would their trade now be, if the internal of the country were to become an uncultivated wild? What is the great source of their riches, but the supply of the internal country with foreign imports, and their being the outlets by which that internal country is enabled to make exports of its produce and its manufactures? What would Hamburgh be, if its situation on the Elbe did not give it the supply of, and make it the means of import and export to and from, the great country of Germany, on the banks of the Elbe, and of the numerous rivers flowing into the Elbe; a vast tract of cultivated land, with a great population of cultivators and manufacturers? What would Holland be, if it were not the outlet and inlet of the whole course of the Rhine, and of the Moselle, and all their tributary streams, from the Alps to the German Ocean. Yet Holland is, in itself, a fruitful and

The soil employed in agriculture has been compared, by certain political economists, to a machine—to a power loom used in the cotton-manufacture. If the soil of a country had been compared to the tree in a forest, which might be used in framing the wood-work of such a machine, the comparison would have been more just. The soil is not itself a machine,—it is only one of the many materials of which the machinery of agriculture is composed. That machinery is

highly cultivated country, made so at enormous expence, by which it has been rescued, and is still preserved, from the waves of the German Ocean, by the art and industry of man.

Much confusion appears to have arisen in the minds of those who suggested this question, respecting Genoa, Venice, and Holland, (for the question did not originate with the person who proposed it, but was suggested at the moment by others, and would have been rejected by his good sense if he had given to it almost a moment's previous reflection,) confounding a state with a country. Hamburgh is a state: and every little independent principality in Germany is a state. But what would each of those states be separately, if every other part of Germany and all the surrounding countries were rude and uncultivated. Palmyra was encompassed by a sandy desert; but in its prosperity it was the centre of communication between highly cultivated countries. It was the centre of a great trade, not arising from its own sources, but from the sources of those countries for which it had become the means of transfer of their productions to other countries. When their prosperity failed, Palmyra fell: it is now only celebrated as,

"Palmyra great in woe."

So would it be with London, if Britain should become an uncultivated wild.

complicated, as stated in the 3d Resolution. Its contrivance has been formed by the skill and experience of ages, and the profitable result depends on the skilful working of the whole machine; subject, however, to the effect of seasons, which may baffle all the efforts of skill and industry, and which necessarily render the profit of the husbandman uncertain, and the prices necessary to encourage and reward his industry various.*

Upon the skilful and successful working of this complicated machine, itself a trade and manufacture, and the first trade and manufacture in which every newly settled country has been engaged, depend all other trades and manufactures. Countries, wanting the first material, a soil capable of cultivation, are without trade, without manufacture, and without inhabitants. If the British islands, by a visitation of Providence, were rendered incapable of cultivation; if their soil were reduced to the condition of the sands of Africa, and would afford no produce in return for the labour and ingenuity of man, what

* It is impossible therefore to fix a certain price on the produce of agriculture, as a price may be fixed on a yard of cloth. The produce of that manufacture is regulated by the quantity of the means by which the production may be effected. The same quantity of those means will give always the same quantity of production. But the means used for the production of corn will in one season give twice the quantity of corn which the same means will give in another season.

would become of their manufactures and trade; what would become of their population? All must quit the accursed spot, and fly to some other country, where a soil, cultivated, or capable of cultivation, would afford them means of subsistence.

If, without the infliction of this curse of barrenness, it were possible to import corn, and other agricultural produce, and coals, lead, iron, copper, tin, and other minerals, from other countries, in such quantities, and upon such terms, as to occasion the abandonment of all cultivation of the soil, and the raising of all minerals and other productions of the land, with what could the foreign articles so imported be purchased? The means of purchase would not be found; and as the labour now employed in the cultivation of the land, in mines, and other productions of the land, and in the works dependent on all, would no longer be employed; and those who had lived by such labour, from the owner of the land to the lowest workman, being without their former means of subsistence, must perish or leave the country, unless they could find other means of subsistence. And where could they find such means? The hard-hearted political economist bids them leave the country. He tells them they may emigrate. Is this to be the reward of all their industry, and of all the capital which they have

employed to raise their country to the height at which it has arrived, in trade, in manufactures, in arts, in arms, in every thing by which it has been distinguished? for to their exertions all its superiority is originally owing.

But before the manufacturer or trader accedes to this hard-hearted sentence of the cold economist, let him first consider what must be the effect of such emigration on his own gains. Would the foreigners take from our manufacturers and traders greater quantities of their several articles of manufacture and trade, in exchange for the agricultural and mineral produce of foreign countries, than those whom the economists would thus expel from the country now take? and if they would take the same quantities, would they take them on the same terms, and with equal advantage to the general welfare? Let those traders and manufacturers, who are most anxious in the pursuit of gain, look at the countries from which they might hope to be supplied with agricultural and mineral produce; let them read the official reports of the manner in which the persons employed in those countries in raising such produce live; let them consider the charges of import and export, (charges which do not affect their dealings with their own countrymen,) and then let them say whether the traders and manufacturers of this country can gain by the ruin of those employed in other

labour, and those who live by the fruit of that labour: whether the traders and manufacturers of this country can gain, by driving so large a proportion of the population (their present customers) out of the country, to employ, for the same purposes, the population of other countries, and to receive from that population, instead of their own countrymen, returns for the articles of manufacture and trade which they may thus dispose of.

The produce of the country must be considered with all its incidents. The produce of the cultivated soil gives employment to the miners, and the produce of the mines gives employment to the cultivators of the soil; and all, together, with the owners of the cultivated soil, and owners of the mines, give employment to carpenters, smiths, masons, bricklayers, and various other artificers, as well as to traders and manufacturers of every description, whose principal means of subsistence are derived from the employment which agriculture and mining afford. Would it not be soon found that the importation of such foreign articles, instead of increasing manufactures and trade, had injured both.*

* How would those taxes and charges, which now burden the agriculture of the country, be paid, if that agriculture were destroyed? The œconomists have, themselves, in their plans for reduction of the national debt, calculated the immense amount of the public taxes which affect the land; and have

But let those who advocate the proposed importation of Foreign Corn consider what *price* really is; and what are the causes which produce, what are called *high prices* of articles in this country.

The real value of every thing is its value in exchange; *and the real price of corn is its exchangeable value.* So estimated, the price of corn is at this time lower than it has been, upon an average, in any former period; for, compared with almost every article for which the grower of the corn, and the owner of the soil on which it is produced, are compelled to give that corn in exchange for other articles, the value of a bushel of wheat is lower now, upon an average, than it has been, upon an average, at any former period.

It leads to error to compute the price of corn by pounds, shillings, and pence, without adverting to the value of pounds, shillings, and pence, in the exchange of corn for other articles. The taxes of all descriptions must be considered in

proposed, on that ground, to throw a great proportion of the sum to be raised for redemption of the national debt, upon the land. They have thus shown the vast burden thrown on the land in direct taxation, for the public use, independent of the burden of local rates and charges, at least of equal amount, and independent of the burden of indirect taxation, which may affect all the population of the country in proportion to their respective means of expenditure.

estimating the exchangeable value of corn, and of all agricultural produce, whether those taxes fall on the owner of the land, the cultivator, the labourer employed in the cultivation, or the various persons furnishing the means of cultivation, or engaged in the transport of its produce from one part of the country to another; and whether these taxes fall on all those several persons directly or indirectly. In this calculation must also be considered what is the present value of money arising from the facility of its transport by bills of exchange, banker's notes, and otherwise. How much, in this way, the quantity of money circulating in the country is increased, beyond the quantity when the circulation was effected by the actual exchange of gold and silver coin in every transaction. How much the national debt, the taxes imposed for payment of the interest of that debt, and other public purposes; the collection and transmission of those taxes to the several receivers; and finally, the emission again of the produce of those taxes to the several persons to whom that produce is issued, and the whole machinery of the public receipt and public expenditure, have increased the quantity of money circulating, by its representatives, in all parts of the country; and how much the value of money, in exchange, has been reduced by its quantity created by these means, and by easy and speedy circulation. If the

quantity of gold and silver raised from American mines reduced the comparative value of gold and silver in the European markets, must not the increase of the representatives of gold and silver, and the greater facility of their circulation, have the same effect?

Consider only what is the difference in the exchangeable value of a bushel of wheat now, in payment of the public taxes now payable, compared with its exchangeable value in payment of the taxes of the same description which existed before the Revolution of 1688, before the American war, or even before the late war; taxes imposed for payment of interest of the national debt, for maintenance of the internal and external establishments of the country, the national force, the colonies and possessions occupied for the purposes of trade, and for the defence of trade in all parts of the world; added to the maintenance of the poor, the maintenance of roads, the administration of public justice, and the maintenance of the clergy: which last fall more directly, and more heavily, on the produce of land than on any other property. To the effect of these may also be added the general luxury arising from the prosperity of the country, increasing, unavoidably, the money rate of all labour employed in the cultivation and management of land, and of every article used for those purposes; and therefore necessarily in-

creasing the money price of its produce. It is the improved cultivation of the country, raising greater quantities of corn from a given quantity of land and labour, and producing profit from that land when not employed in the production of corn, which enables the producer of corn to exchange that corn at the money price at which it is now rated. In actual exchange of corn for many other articles, the quantity of corn given, estimated at the present money price, is much greater than the quantity given for the same articles many years ago. In payment of taxes, particularly, the difference is enormous. It is the high cultivation of the country, the skill and capital employed, and the augmentation of produce by that cultivation, in proportion to the quantity and quality of the land cultivated, which enable the producer of corn to give it in exchange at the money price at which it is now rated.* The parliaments of Charles the Second and of William acted upon the principle that encouraging the cultivation of the country was the surest means of feeding the population of the country at the cheapest rate; and comparing

* In this view of the subject, it has been said that corn is raised at a cheaper rate in England than in Poland: that is, from a given quantity of land by a given quantity of labour, a greater quantity of corn is produced in England than in Poland; and this is principally effected by capital skilfully employed, and particularly by means of animal stock combining the profit of animal stock with the production of corn.

the exchangeable value of corn at this moment, with its exchangeable value when the first laws of Charles the Second were applied to the subject, it is clear that the encouragement of cultivation has had the effect which those parliaments contemplated. They had in view to make corn cheap by producing plenty; to produce plenty by making the production profitable; and to ensure profit to the producer, by giving him the benefit of a certain market, regulated in price by the effect of seasons only, and not by the intervention of a foreign competitor, unless an extraordinary unfavourable season should render such intervention necessary to prevent famine.

The 3rd Resolution applies to the effect of the improved system of agriculture in the country, the means by which the production of corn for the food of man is procured according to that system; and the profit which the cultivator obtains by the cultivation of corn, through the medium of the profit which he derives from other productions, and particularly animal productions, and the result of the combination of the whole of the several articles so produced, forming the general profit of the cultivator, and concluding that the combined effect of all these operating causes is to give plenty by cultivation, and to render cultivation profitable.

This Resolution applies to a very important part of the subject under consideration, (partly

noticed in observations on the preceding Resolutions,) which some modern economists seem wholly to have overlooked. They speak of the cultivation of land for the production of corn as if it consisted simply in stirring the earth, and placing seed in the earth so stirred. Such may have been the practice in the rudest times, when land, exhausted by this process, might be left (according to a vulgar expression) to right itself; to be wholly unproductive for many years, and fresh land might instantly be resorted to for the growth of corn. This miserable mode of cultivation necessarily ceased as the population of the country increased; and the production of corn is now become a very complicated manufacture, the profit of which depends on the produce of the whole of the machinery employed in it, of which the soil itself, in its rude state, is only one material; and the capital employed upon the soil in various ways, to fit it for cultivation, to provide accommodation for its produce of every description, to defend that produce from injury, to increase the natural powers of the soil, to vary its produce by skilful succession of crops and different modes of culture, to stock it with animals for the purposes of profitable production and for purposes of labour, together with the labour employed to render all these productive, and finally to carry the produce to market, is of far greater importance. The profit of cultivation depends on *the produce*

of the whole of the machinery employed, including the produce of animals, as well as the produce of grain, and particularly wool, hides, skins, tallow, butter, cheese, and other articles; together with the value of the animals themselves for the various purposes to which they may be applied, and the effect which the manure of those animals has on the productive powers of the land, the effect of other manures, and the effect of varying the produce required from the land in successive seasons, in a long course of skilful cultivation, of operative labour, and of rest. The quantity of each article produced by the cultivation of land, and the profit derived from each, depend, in a great degree, upon the combined effect of the whole system; and skill, labour, and capital are all necessary to produce profit from the employment of this complicated machinery; and man will not employ skill, labour, or capital, unless he can derive profit from the employment. Capital is most essential to the profitable cultivation of land. Without it the occupier cannot procure the means of profitable cultivation. A large stock of animals is an important mean by which the land is advantageously cultivated, and the produce rendered abundant. If your Lordships would condescend to make those inquiries which ought to be made to enable you to legislate properly on this subject, you would find that there is at this moment an alarming deficiency in the quantity of stock on the tillage-farms in the

greater part of the country, necessary to insure the proper cultivation of those farms; and that this deficiency has arisen from the poverty of the occupiers, resulting from the reduction in the prices of several articles of produce, and particularly the produce of animals, by the unnecessary importation of foreign produce, especially of wool. A very large proportion of those farms, I have been assured, by authority on which I can rely, are not more than half stocked; and many are not half stocked. The produce of the tillage of the country is therefore in danger of failing, in consequence of the importation of foreign produce to the prejudice of the profit which was derived from that cultivation; not only by reduction in the price of corn, but also by destruction of an important part of the profit derived from animals. If a succession of unfavourable seasons should occur, the stock on the tillage lands of the country may be so reduced, that the failure of home produce from tillage, for want of the benefit of such stock, may render *a vast importation of foreign corn necessary to supply the inhabitants with food;* and the price, not only of corn, but of meat, and of every other article of agricultural produce, may be enormously increased by the means which have been used by the importation of foreign produce to decrease the home prices of the articles so imported.

The economists have proposed to reduce the

price of corn by throwing out of cultivation at least one third of the tillage-lands of the country, and importing foreign produce to supply the deficiency for the consumption of the existing population. They would thereby throw out of employment nearly one third of the population now employed in tillage, and in the several occupations connected with it; and they cannot deny that such would be the effect of the measure. When asked how that vast body, deprived of their accustomed means of maintenance, could be maintained, the economists (without feeling, except for their own wild system) reply, "Let them emigrate." * Is it of no consequence to reduce to poverty and want that part of the population which is the foundation of your internal and external strength, and finally to drive them out of the country?

But would the throwing out of cultivation any part of its soil reduce the price of home-grown

* Some have said, "let them engage in manufacture;" but has not the market been already, by various means, overstocked with manufacturing labourers? Every labourer would be a manufacturer now, if he could find employment in manufacture, and obtain the high wages of manufacturing labour. The master manufacturers may imagine that they may benefit by an overflow of manufacturing labourers, reducing the price of labour in manufacture, and throwing those who may be unable to find employment on the poor-rates. Has not the great increase of manufacturing labourers, tempted by high wages, been one cause of the distress complained of in manufacturing counties?

corn? Does not the price most importantly depend on *the quantity produced in the whole country,* whatever may be the nature of the soil of any particular parts*; and would not the reduction of the quantity increase the price, unless the deficiency should be supplied by importation of foreign corn; which must have the effect of encouraging the cultivation and the population of other countries, in diminution of the cultivation and population of your own country?

Would the manufacturers gain by applying

* The economists are grossly mistaken in supposing that the natural quality of soils regulates the rent of cultivated land. Skilful cultivation, long pursued, brings soils of very different natural qualities in a great degree nearly to a level. Art will make soils, naturally incapable of cultivation, highly fruitful, and has done so in millions of acres of the now cultivated lands of Britain. Rent indeed often depends much more on situation than on the natural or improved quality of the soil. Land will let for large rents in one situation, whilst land of the same quality would let for little in another. The proximity of large towns, of convenient markets, of navigable rivers, canals and other means of transport, of manure, of coals, or other fuel, of materials for buildings, and various other circumstances, affect the rent of land much more than its natural fertility. The expenditure on land to render it fit for cultivation, the quantity of time during which land has been in cultivation, and the expenditure and skill employed in its improvement during its cultivation, all also materially affect the rent of land. Land in one situation, and long improved, though naturally of inferior quality, will let for five pounds an acre; whilst land of equal natural fertility, in a different situation, and not improved, will not let for five shillings: as a yard of cloth will sell for ten times the price of the wool used in its manufacture.

the produce of their manufactures in purchasing corn from the agriculturists of other countries, instead of applying those manufactures in the purchase of corn from the agriculturists of their own country? Which would be most likely to be the better customers, the agriculturists of a rich or of a poor country?—the agriculturist close to the door of the manufacturer, or the agriculturists of distant countries, to whom manufactures must be sent at considerable expence, with considerable hazard of loss?—the ready-money customer or the dealer on credit?

But have the manufacturers considered, that not only the farmer and his labourers would thus be thrown out of employment, with their families, but that all other persons supplying those farmers and labourers with the various articles necessary for the cultivation of lands, and also the owners of those lands, and all their dependents, (a great portion of the population of the country,) would, in the same proportion, be reduced in their means of purchase; and that if thus the price of corn could be reduced the means of those engaged in the cultivation of the remaining portion of the lands of the country would also be reduced? If compelled to sell for five shillings the corn which they now sell for seven shillings, would not their means of purchase of articles of trade and manufacture be in a much greater proportion reduced, and the means of

all in any manner dependent on or connected with them be also reduced? The agriculturist cannot gain by the poverty of the manufacturer or trader, nor can the manufacturer or trader gain by the poverty of the agriculturist.

But are the economists assured, that if their plans should succeed, and throw out of cultivation a large portion of land in Great Britain, the lands least fertile by nature, are the lands most likely to be thrown out of cultivation for the production of corn, by reduction in the price of corn? This would not happen, unless those lands would, if not cultivated for the production of corn, produce more benefit to the owners and occupiers, when employed for other purposes, than they would do if continued in their present state of cultivation. The economists have supposed, that if a large portion of land now cultivated in the British islands for the production of corn had remained in a pastoral state, a greater quantity of animal food would have been produced; and that the country would have derived more benefit from the land in its natural state, than it derives from the same land in a state of cultivation. This is so gross an error, that it is astonishing that it should ever have entered into the mind of any man the least acquainted with the cultivation of this country.

Without immediately adverting to the produce, and looking only to *the strength of the*

country, is not the population employed in the cultivation of those lands, and in the consequences of that cultivation, probably twenty, thirty times more numerous than the population necessary to tend the animals which might have been kept on the same land in its original uncultivated state? In the next place, it is an unquestionable fact, that the quantity of animal food produced on the worst land in a state of cultivation, according to the present system of agriculture, is much greater than the quantity which would have been produced on the same land, if it had remained uncultivated. If doubt should be suggested on this subject, it would be a proper subject of inquiry before it is attempted to legislate on the bare assertions of economists; but no person acquainted with the subject will venture to suggest a doubt.

Would then the importation of foreign corn throw such lands out of cultivation, and confine the growth of corn to the rich lands only? Experience has demonstrated that it is generally more beneficial to lay strong lands to grass than poor lands. Upon every inclosure of common field-land, which has taken place during the last four hundred years, and more, a portion of the land before ploughed for corn has been converted into grass-land; because it was generally the best land, and the waste land was generally the worst; and it answered to the owner to con-

vert the good land into grass, when the inclosure enabled him so to do, and to plough the inferior land, which had been before waste. If therefore the effect of importation of foreign corn should so materially reduce the price of home-grown corn, as to render the feeding of animals, on any land, exclusively, more beneficial than the production of corn, and feeding of animals alternately, according to the present system of management of tillage lands, would not the best land, and not the worst land, be laid to grass? would not the poor lands remain in cultivation? Such would unquestionably happen; because, in a state of cultivation the poor lands would produce more food for animals than they would if not cultivated, and would also produce corn. Their whole production would therefore be considerably greater.

Throwing out of cultivation any important part of the cultivated land of the country, if effected, necessarily taking so much from the produce of the country, from its population, from its internal consumption of manufactures, and objects of trade; what would indemnify the country for the loss it would sustain? How great would that loss be, even in the reduction of the public revenue? Must not that proportion of the revenue now borne by the cultivators of such land, wholly fail, unless it could be thrown on the manufacturers and traders? It

could not be borne by the cultivators of the rest of the lands of the country; for at the same time that it is proposed to annihilate the profits of the cultivators of the poor lands employed in tillage, and drive them out of the country, it is also proposed to reduce the profits of all cultivators of land, by the importation of foreign produce of every description.

If "the agriculture of the country is (as was asserted by Lord Liverpool in 1820) the broad basis on which the whole superstructure of the national wealth and strength was founded," what might be the effect of reducing the *breadth* of that basis, by reducing the breadth of the land in cultivation? What would be the effect on its trade, what on its manufactures, what on its revenue, what on its power, what on the general happiness and prosperity of the country?

The 4th and 5th Resolutions state the policy on which the Corn Laws have been, from time to time, professedly founded; namely, the general improvement of the country, by rendering that improvement profitable to those who might engage in it. The legislators were well aware that men will not labour for that which is not profitable to him; and believing, with Lord Liverpool in 1820, that "agriculture was the broad basis on which the whole superstructure of the national wealth and strength was founded," they thought if their duty to add to the

breadth of that basis, by extending cultivation to the lands then not cultivated, and increasing the production of the lands then cultivated, by improved cultivation; conceiving that every extension of cultivation would lead to further extension, and would produce increased employment, not only for labourers in agriculture, but also for manufacturers and traders, and for those employed in every art in which the industry of man could be employed: that the air of the country would be thus rendered more wholesome; that improved communication by roads, and other means of conveyance, would follow; that increased population, affording to all greater facility of mutual assistance, would increase personal safety; and that all the advantages of improved society, and general civilization, would be the result: advantages which never have existed, nor ever can exist in an uncultivated country. The legislators having thus, by the express language of its statutes, offered to the *proprietors of land* a reward for the expence and labour which might be employed in the improvement of their land, for the purposes of cultivation, and having by that encouragement induced great employment of both expence and labour, by owners of land, and their tenants, and thus brought vast tracts, before wild and unproductive, into a high state of cultivation, and greatly improved the cultivation of the land

before cultivated, *the faith of the legislature, and the faith of the country, are pledged; and withdrawing the benefit of that pledge would be a gross breach of faith.*

The 6th Resolution, following the concluding words of the 5th, acknowledges the foresight of the legislature in adverting to the calamity which might be produced by those visitations of providence to which the produce of the soil is peculiarly subject, inclement seasons; baffling all the efforts of human industry, reducing, perhaps to nothing, the fruits of that industry, and of all the expence bestowed in the cultivation of the soil, and sometimes bringing utter ruin on the unfortunate cultivator. The possibility that the produce of the country might by the effect of untoward seasons so fail, as to threaten, by scarcity, the danger of famine, induced the legislature so far to relax the general system calculated to encourage increased cultivation, as to suspend (under such alarming circumstances) the protection offered—but to suspend it only for a time, and until the land of the country should be again productive of the ordinary crops of corn. The danger of famine, that danger being demonstrated by an extraordinary rise in the price of corn, was considered by that legislature as the only warrant for departure from the general system. That legislature was aware that when inclement seasons should unfortunately reduce

the crops of corn in the country below the usual produce, the corn-grower must lose the reward for his labours if he could not obtain a price for the actual produce, bearing some proportion to the deficiency of his crop; and therefore allowed of that increase of price, until it should rise so high as to raise just apprehensions of famine; but till the rise should be such as to manifest that the harvest had been so unproductive as to threaten general want, they did not think it a wise or a just policy to deprive the cultivator of such an advance of price as would enable him to persevere in labour and expence, in the hope of a succeeding more favourable season; aware too that by depriving him of advance of price to recompense him for deficiency of quantity, they might deprive him of the means of cultivation in that succeeding season, and thus, even in a favourable season, reduce the produce of the country below the usual average, and render certain the danger which they wished to avoid.

The 7th Resolution is more directly applicable to existing circumstances, and to circumstances of recent occurrence. The present prices of corn indicate no scarcity of produce; compared with former prices they are rather below than above the average, considering the present value of money, the rise of prices of other articles of consumption, and the increase of burdens on the people, and especially on the cultivation of the soil. Their ad-

vance beyond the ordinary prices of earlier times, does not therefore indicate scarcity. They are the necessary result of causes which have operated in the same manner upon various other articles, and of causes likely to be permanent.

This Resolution also applies, and the 8th, 9th, 10th, 11th, and 12th Resolutions more directly apply, to an attempt of an alarming nature; an attempt to fix certain limits on the prices of all the different sorts of grain produced in the country. In other words, to create what has been called *a maximum price of every sort of grain.* The attempt to fix a maximum on any article of production, has generally been found highly injurious to the production of that article in every country where the attempt has been made; and it is likely to be more injurious when applied to corn than to any other article of production, as the production of corn depends so much on seasons, and so much on the capital employed in cultivation, that capital necessarily depending on the amount of profit derived from cultivation. The same land, cultivated at the same expence, may, in a favourable season, produce twice as much as it will produce in an unfavourable season: and if the produce of both seasons is to be sold at the same price, the gain must be enormous on the produce of the first, or the loss will be enormous on the second. Seasons are, generally, nearly the same in all parts of the country, and

often in all parts of the world from which corn is likely to be imported. When therefore a favourable season occurs, the produce generally so much exceeds the demand, that the price is proportioned to the quantity produced, and is therefore generally low, and much below the price which is now attempted to be fixed as a maximum. The price received in a plentiful season may be so low as to be a bare remuneration to the cultivator. When an unfavourable season occurs, and the quantity produced is only half the quantity produced in the former favourable year, the price must greatly exceed the price of the former year to afford a just remuneration to the cultivator, as all his expences will be the same as, or rather much greater than, in the former year. For even the expences of the collection and preservation of the crop in a very inclement season, are necessarily much greater than in a good season. The prices fixed by the old law, when importation was allowed, so far exceeded the ordinary average, as to indicate the probability of famine; the probability that all the corn in the country would, with all possible economy in its consumption, be insufficient to feed its inhabitants. Those prices were fixed in contemplation of an extreme case, in which the preservation of life superseded all other considerations. On the contrary, the prices referred to in the 7th and 8th Resolutions are not such as

to indicate a deficiency of produce in the country, warranting any apprehension of scarcity. They are therefore assumed arbitrarily as the highest prices at which the legislature will *permit* the cultivators of this country to sell their different kinds of grain, if, by importation from foreign countries, higher prices can be prevented; and *it is therefore an attempt to fix a maximum*, not in times of scarcity, but at all times. To aid this plan of fixing a price which shall never be exceeded, the warehousing system is to receive the greatest encouragement; and thus the cultivators of this country may be kept in constant uncertainty as to the reward which they may expect for their labour and expences. If they have the advantage of a very plentiful season, giving them a large produce, the quantity of produce in the country will necessarily reduce the price far below what ought to be the average price of the produce of ordinary seasons. The farmer must sell his corn to obtain the means of cultivating his land for the ensuing season. The fine season which has occasioned plentiful produce in this country, will probably extend generally to other countries; and the prices there will fall to the lowest point. The speculator may there purchase at that price; and bringing the corn so purchased to this country, will place it in warehouse, *without payment of any duty*. If an unfavourable season should follow in this country,

and the produce should not be more than half the produce of the plentiful year, and the prices should rise to the point which it is proposed should be fixed as the maximum, the imported corn may be brought into market, paying the duty according to that price, and sold to great advantage to the speculators, at a rate at which the home cultivator cannot sell his corn without great loss. *He must sell* to enable him to cultivate his land for the ensuing season; and he will thus be always compelled to sell the corn of every season, at prices, barely remunerating in a plentiful season and with certain loss in a bad season. It seems manifest that the cultivation of the country must greatly suffer, if this policy should be adopted. Indeed, that it cannot be continued long, or that it cannot be continued without a revulsion which may be productive of the most fatal consequences. The profit of a good season barely remunerating the farmer, one bad season will ruin every farmer not possessing a capital enabling him to bear the great loss which, in such a season, he will suffer; and the repetition of failures will have the effect of rendering the employment of capital in agriculture so precarious, that few will venture to engage in so hazardous a trade, and all credit will be withdrawn from it. The stocks of ruined farmers will be taken in execution, sold to the best bidder, and thus withdrawn from the

land on which it had been produced; a proceeding which experience has shown to be at all times injurious to the cultivation of that land: and experience has also shown, and it has lately been severely felt in different parts of the country, that when many farmers are thus ruined, it is difficult, and perhaps impossible, to find others willing to take, and capable of taking the deserted lands. The farms are then thrown upon the landlord, who may not have the capital required properly to stock and crop the land; or if he has capital, may not have the means of putting the land under proper management.*

It is scarcely possible to conceive a measure more directly tending to destroy the cultivation of the country, to reduce its produce far below the wants of the people, and render it always tributary to other countries for its means of subsistence, than this attempt to fix a maximum on the price of every sort of grain. The measure, if adopted, must also lead to extravagant specula-

* The ruin produced in Poland by events in that country has thrown many farms upon the owners, who cannot find tenants with any capital by which those farms may be cultivated. One great proprietor in that country has had above 50,000 English acres of superior land thus thrown upon his hands. He has been compelled, with insufficient means, to cultivate the lands by bailiffs; and the consequence has been great loss instead of profit. Similar cases, though not of the same magnitude, have recently happened in this country, and must continually occur if the system of Corn Laws now proposed should be adopted.

tions of dealers in corn in this and in foreign countries; and a bill to carry the measure into execution may be justly deemed a bill to encourage speculation in corn, both home-grown and foreign; offering strong inducement to frauds in raising or depressing the averages of prices, which the speculators may raise or depress as may be most for their advantage; and the dealings of the speculators, and not the vicissitude of seasons, will then really regulate the corn-markets of this country. Already the circumstances of the country have placed the markets greatly in the power of the corn-dealers. Already a part of the price paid by the consumers of corn is paid, not to the farmer, but to the corn-dealer: and every witness examined in the committee which was lately appointed to make inquiries respecting foreign corn, and who had any knowledge of the home market, calculated, that when the average price of wheat in the market was sixty shillings, the price actually received by the farmer did not exceed fifty-five shillings.

The experience of other countries has shown the effect of dependence on the importation of foreign corn, in discouraging home cultivation; and this has been fully proved by papers laid before the House. As seasons vary, prices must vary, to render cultivation profitable. The object proposed is, to control the effect of seasons, and to render the prices of all sorts of

grain independent of their effect. If that object can be obtained, it must be obtained at the expense of the cultivators of the soil. It must therefore discourage cultivation, which the vicissitude of seasons always renders hazardous. The measure proposed will greatly increase the hazard of cultivation; a business not generally profitable will not be long pursued, and the effect must be, by injuring the home cultivation, to render the country always dependent on other countries for its daily bread. It must also reduce the numbers of the most healthy, the most vigorous, and at the same time the most orderly, portion of the population; of that portion which now principally recruits the armies and navies of the country, and supplies the waste of life in unhealthy or hazardous employments, and the waste of life produced by the intemperance of those who indulge in luxuries from the temptation of higher wages.

The 13th, 14th, 15th, 16th, 17th, and 18th Resolutions, suggest other objections to the measure in contemplation, which appear to me to deserve serious attention; but I feel myself so much exhausted, and I fear that your Lordships' patience may have been also so much exhausted, that I shall not at present trouble you with observations upon them; reserving any which I might think adviseable to make, for proceedings in that Committee to which I wish the consider-

ation of the whole should be referred, if your Lordships should think fit to adopt that mode of proceeding.

On the 19th Resolution, I will only observe, that applying to the importation of foreign wool, and other articles the produce of animals, it *practically illustrates* much which I have advanced with respect to the importation of foreign corn at the duties proposed: namely, that duties, not restricting importation when the produce of the country is equal to its consumption, must have the effect of *driving out of the market the actual production of the country*, and thus, gradually, reducing the production of the country. To this the warehousing system will greatly contribute. Even the failure of profit from speculations in foreign corn, if that should happen, will be injurious to the cultivation of the country; by rendering its profit more precarious than it would be, if operated upon only by variety of seasons.*

* Speculators may accumulate in warehouses a quantity of foreign corn, in expectation of profiting by failure of the harvests in this country; and if a plentiful season should deceive their expectation, and they should be compelled to sell their warehoused corn at a great loss; the price may fall so low, from superabundance, that the speculators and the corn-growers may be involved in one general ruin. This may damp the spirit of speculation, and of importation *for a time;* but the injury to the cultivation of the country will be *permanent,* by destroying a large portion of the capital employed in cultiva-

To the immediate subject of the 19th Resolution, which is also referred to in the 20th, I have ventured repeatedly to call your Lordships' attention on former occasions; as it shows how much the agriculture of the country, as a profitable trade, depends on all its parts; and how much the importation of other foreign produce, affecting the general profits of the cultivator, must affect the price at which he can raise corn with reasonable profit.

The 21st Resolution applies to a subject in which I feel great personal interest; and urging it to your attention I consider as a debt of gratitude to the country to which it particularly relates—Ireland, unfortunate Ireland! The corn-market of Great Britain is open to Ireland without any charge of duty. That this is important to Ireland in its present state, who can doubt? The remittances which that country is compelled to make to absent proprietors, are principally made by its produce finding a market here. And can any one, who knows any thing of Ireland, doubt, that if that country was cultivated as it might be, it would be able to supply any deficiency of Great Britain in the production of corn, without resort to foreign countries? at least, until, by the progress of improvement, Ireland shall demand for its

tion, disabling the cultivators from pursuing their employment, and reducing the agriculture of this country to the miserable condition of the agriculture of Poland.

own consumption all that it could produce? Why is Ireland a country exporting corn? Because it is poor. Why does not England *now* export corn, which it formerly did? Because England has become rich; and now, by its increased population, (the result of its high cultivation—for its manufacturing and trading population as well as the rest of its population, are the result of that cultivation—and by its increased consumption in proportion to its population, the result of increased riches,) consumes all that it produces. But does even Great Britain consume all that it *might* produce? No. Look at the vast tracts of uncultivated lands which still remain in various parts of England, and still more in Wales and in Scotland, and you will find that Great Britain may yet be made to yield, from lands yet uncultivated, far greater quantities of grain than it now does. Even in England, in many parts of the country, long cultivated, the improved system of husbandry has not yet made its full progress; much land is still imperfectly cultivated, much land is still injured for want of proper drainage, proper inclosure, proper shelter. In fine, England is not yet, in many parts, cultivated as it might be and as it ought to be.

The defects in the cultivation of Wales are still more striking; and Scotland, with all the rapid improvements of that part of the kingdom, is yet

capable of doing much, very much more. A survey of the whole island, for the purpose of ascertaining its powers of production, would demonstrate, that the resources of Great Britain itself for procuring food for itself are immense, if improvident importation of foreign corn should not be allowed to check improvement. Much as its cultivation has been improved within the last hundred years, it can scarcely be said that it is yet more than half cultivated as it might be cultivated.

The economists affect to cast a ridicule on improvers of land, and represent the expense as often exceeding the value of the return. Yet the same economists will applaud expenditure in purchasing articles of mere luxury, which perish in the use. Such luxury, they say, encourages industry. And does not the man, who drains a bog, renders a sandy desert a fruitful soil, or in any other manner makes land which produced little or nothing, highly productive, though his expense may have exceeded the return made to him, also encourage industry? And does he not give *permanent encouragement* to industry, and more beneficially to the country, than the purchaser of a splendid bauble, which is consumed in the use.*

* The silk weavers have put out a pamphlet, to show the great importance of the silk manufacture: asserting, that a population of ten millions of people in England wear twice as

The 22d Resolution again notices an important subject already frequently alluded to—the effect which the importation of Foreign Corn may have on *the capital* now employed in cultivation. The importation of foreign articles, noticed in prior Resolutions, has already had an injurious effect on that capital, and particularly the importation of foreign wool. One farmer in Scotland, with a flock of ten thousand Cheviot sheep, complains, that in consequence of the reduced price of wool by foreign importation, and the consequently reduced value of sheep, his single loss in produce and stock amounts to many thousand pounds. I have no doubt that his loss must be immense, knowing the immense loss which the farmers in parts of Northumberland, and adjoining parts of Scotland, whose sole business is the breeding of sheep, and whose principal profit arises from wool, have sustained.

The effect of foreign importation of agricultural produce of any description is to transfer so much

much silk as thirty millions wear in France; and that even in a country church scarcely a woman is to be seen without a silk bonnet. What does this prove, but that the general prosperity of the country has produced extravagance in an article of mere luxury? But let the silk weavers coolly consider whether, if they reduce to poverty the agriculturists, the silk bonnets must not vanish from the country churches. Indeed, the present wearers of such bonnets must vanish from those churches, if compelled, as urged by the economists, to emigrate; and even now, some of those bonnets have been purchased with money furnished by poor-rates.

of the capital of the British farmer to the foreign farmer. Look at Mr. Jacobs' Report, and say, whether his opinion is not that every importation of Polish corn will be a transfer of so much capital from the British farmer to Poland; and whether he does not conceive that such transfer will operate to improve the cultivation of Poland by means of such capital? And does he flatter you with the hope that the profit derived from that capital will be employed in the purchase of British manufactures? No; he tells you that the Polish peasant, when the improvement of his land shall enable him to employ any part of his gains for other purposes, will employ it in the purchase of German, not of British, manufactures.

The 23d Resolution applies to a subject of paramount importance—to the constitution of the Government of the United Kingdom; that constitution to which we owe all the wealth, and all the strength which we possess, because *to that we owe the security of all.* The Resolution asserts that the constitution of the Government of the United Kingdom, in all its parts, and the symmetry and security of the whole, are founded and depend upon landed property. Will any of your Lordships deny the truth of this proposition? It further asserts, that the several parts of this constitution cannot exist in their present form if the value of such property shall be mate-

rially diminished, and its due weight in the government of the country shall be thereby destroyed. Is any noble Lord disposed to deny this? It further asserts, that any *material injury* to that property, by destroying the just balance of that constitution, must lead to the overthrow of the existing form of government, and the substitution of some new form of government, unless internal convulsion shall operate, as it has formerly done, to bring back the old form of which the people had experienced the benefits, and to which therefore they willingly returned.

What is the popular cry which the proposal of the measure contemplated has excited? "*The reduction of rents*;" not the reduction of the rents of houses, of manufactories, of warehouses, of machinery, or any thing relating to other trade or manufacture; (though for such purposes land has been let by the inch instead of the acre;) not the reduction of the profits of trade or manufacture, though such profits have enabled some manufacturers, in the course of a few years, to accumulate millions of money, and to live in a splendour and luxury far surpassing that of the greatest landholders in the kingdom; but the reduction of rents of *cultivated land*, and particularly of land cultivated for the production of corn. The economists hold all rent, for cultivated land, an abomination; a thing which cannot exist until all the rich lands of a country have

been cultivated, and poorer lands are brought into cultivation, to supply the demands of increasing population. The cry has gone forth: "*The landed interest must be put down.*" Such is the mercantile cry, such is the cry of the speculators of every description, and such is the cry of the economists. Those economists boldly assert, that the profit of trading and manufacturing stock cannot be too high, or the profit on agricultural stock too low; that the country benefits by the former, and suffers by the latter; that, for the same reason, manufacturing wages cannot be too high, or agricultural wages too low. To what does all this cry against agriculturists tend, but to set one part of the population of the country against that part from which all have sprung; to reduce the latter to poverty; to throw all riches, and all power, (for riches create power,) into the hands of merchants, manufacturers, money-dealers, and stock-jobbers; to overturn the just balance of the constitution, and to build up a commercial, money-jobbing, republic, on its ruins?

The 24th Resolution calls to your recollection the experience of former times, and the result. That the laws sought to be repealed have produced the extraordinary cultivation of the country, that cultivation which is the admiration of other countries; and that, considering the heavy burdens which the country now bears, and its ex-

tensive and rapid circulation of money, (or of symbols of money, which has the same effect as the increase of the quantity of money, money being represented by its symbols,) and the increase of the value of money in all other transactions, the prices of grain are much lower now than they were when the system upon which those laws have been founded was adopted on the restoration of Charles the Second: the reduction in real prices (though there has been an increase in nominal price) having been produced by the increased cultivation, and the improved course of cultivation which the statutes of Charles encouraged, and by encouragement produced.

The 25th Resolution adverts to that system of free trade which has of late been so strongly recommended by the economists, and which they pretend would produce universal good will, universal peace, and render all the inhabitants of the world one nation—

"La Grande Republique du Genre Humain."

The wild conceit of those who involved France in confusion, and kept it long in misery.

The very taxes with which this country is burdened, operate as bounties on the importation of the produce of other countries not so burdened. Can free trade be established whilst those taxes remain; and can those taxes be repealed? Can the national debt be swept away, and all the expenses of the government, army,

navy, colonies, be defrayed without taxes? If not, how is the amount of those taxes to be raised? The economists would charge them on the cultivated land of the country, already so heavily loaded with burdens, which are the great cause of the prices of agricultural produce, of which the same economists complain. Whilst those charges shall remain, it is manifest that the produce of cultivated land in this country cannot contend on equal terms with the produce of foreign countries not so burdened. Of all manufactured articles, corn is that which is most heavily taxed, and of which the produce is most uncertain. It is determined often by the season, and must proceed in a regular course, whatever seasons may occur. If the manufacturer of other articles finds the market glutted with produce, he may stop his machinery, discharge his workmen, and throw the burden of their maintenance on the poor-rates of the parishes to which those workmen may belong, and of which he may be charged only with a small part, or with no part.

But the machinery of agriculture must go on, in a regular course of husbandry, whatever may be the result; or the cultivation must be wholly abandoned, and the land again become a rude wild. And yet, though the cultivation should be thus abandoned, the maintenance of the unemployed labourers must still fall, in the shape of

poor-rates, upon whatever the land may spontaneously produce, as long as any thing shall remain on which that tax may be levied.

As free trade must necessarily require the abolition of all duties of export and import, the burden necessary to supply the deficiency of the revenue, must be thrown on the land; and to throw such a burden on the land, in consequence of failure of the revenue by repeal of taxes on objects of other manufacture and trade, is, however unjust, palpably one of the objects of the measures now in contemplation. The Bill before you is a Bill "to grant to His Majesty duties of customs on corn." It is avowedly a money Bill, a grant of revenue to the Crown for the public service.

I am conscious, my lords, that in what I have offered to your lordships, I have trespassed on your patience. I have been compelled to frequent repetition of similar matter and similar arguments, from the nature of the subjects to which I have been under the necessity of calling your attention; the same matter, and the same grounds of argument applying to a just view of different parts of the whole subject under your consideration; all, however, leading to this important conclusion, which I stated in the outset, and which is proved by adverting to every part, and combining the whole—"That the wealth and strength of this country originated in the culti-

vation of its soil, must always depend upon it, and must fall with it;"—and, therefore, that whatever may tend to injure that cultivation, or obstruct its progress, must tend to the downfall of that empire which has been the admiration and envy of the world.

His lordship concluded with moving, "That the House should resolve itself into a Committee for the purpose of considering the Resolutions." upon which a motion was made "to adjourn," and the House adjourned accordingly.

Previous to the motion of adjournment, one of His Majesty's Ministers made an observation upon the second Resolution, which has been already noticed and attempted to be answered in a note on page 69. He also represented, that during the eighteenth century, *agriculture was stationary*, but other things were not, and distress prevailed in the country on account of the high price of corn. He certainly forgot, that during the eighteenth century agriculture made its greatest progress, instead of being stationary: that it was the very period in which those improvements were made, by which the agriculture of this country has been most distinguished. The population, he observed, continued to increase, and the greatest possible distress prevailed on account of the high price of corn,

particularly between 1763 and 1773. He forgot the causes of the distressed state of the country during that period. He forgot the contest of parties, the weakness of the government, and the continual change of those by whom the government was administered. Every thing was in confusion during that disastrous period. To accomplish the misfortunes of the country, the ministers had thought fit to attempt to fill an exhausted treasury by those measures which produced the American war. Let our ministers take warning by that unfortunate experiment. Let them not attempt to fill an exhausted treasury by a partial land-tax.

The minister having thus noticed what he called the abandonment of the old principle in 1773, and the adoption of a new principle—the constant importation of foreign corn—observed, that this new system was acted upon till 1815; and that it was to the principle of the law of 1773, that the supporters of the bill in question were endeavouring to return: that is, the constant importation of foreign corn. He avowed, therefore, that the principle of the old law, which had produced plenty to the country during a century, a period during which the agriculture of the country had advanced with astonishing success, (notwithstanding the minister's assertion to the contrary,) and during which the price of corn had been generally much lower, and, compara-

tively with the value of money, far lower than at the restoration of Charles II., was to be abandoned. That that system which had been advocated by Lord Liverpool, only seven years before, was by Lord Liverpool, even by *him*, intended to be abandoned; that the broad basis on which, in 1820, he thought all the prosperity of the empire rested, was, in less than seven years after, to be destroyed. It is difficult to conceive, that such was the opinion of Lord Liverpool, acting upon the influence of his own mind. If such was his opinion, why did he act in opposition to it in 1813, and 1815? But then it is admitted, that the old system was restored. Why was it restored? Because the country had experienced the mischief of departing from it. Because the price of corn had been constantly higher, when the system was departed from, than whilst it prevailed; except when bad seasons, the infliction of Providence, which no minister, and no law can controul, reduced the produce of the country, and when extraordinary circumstances affected the prices of that produce beyond the effect of seasons, and when the continued prosperity of the country in other respects, augmented its population, and increased luxury augmented its consumption.

The old system having been restored, what has been the consequence of that restoration? Has the price of corn risen? Has it not un-

questionably fallen? Has it not fallen in one favourable year, with a very plentiful harvest, so low, that no man will pretend that, on an average of years, corn can be produced in this country at so low a money price? Did it not fall so low, that the exchangeable value of three bushels of wheat would not purchase many articles which the exchangeable value of one bushel would have purchased sixty or seventy years ago?

In answer to the assertion in the 13th Resolution, that foreign corn imported into this country would probably be paid for *in money, and not by a corresponding export of British manufactures, or other commodities, to the places from which such corn should be brought;* (an assertion made by every well-informed witness examined by the committee appointed by the House to inquire into the subject;) the minister stated, that in the then last year, (the year 1826,) two millions of quarters of foreign corn had been imported, the cost of which he estimated at above one million of pounds sterling: and he added, that gold had, notwithstanding, flowed into this country in that year, to a great amount.

The minister did not state from *what source* he conceived that this influx of gold had arisen; and had he (instead of listening to his prompter) used his own good sense, and looked at the printed accounts of the imports and exports of

this country from and to Russia and Prussia, then on the table of the House, he would have found that this influx of gold could not have arisen from any dealings with the countries from which the two millions of quarters of corn had been imported; but, on the contrary, that gold must have been exported to those countries, in payment for that corn, if means of payment *in money* (according to the words of the resolution) had not arisen from other sources. By those accounts, he would have learned that our imports from Russia in 1826, *very greatly exceeded our imports from that country in any former year*, and amounted to nearly three millions, seven hundred thousand pounds sterling; whilst our exports to that country scarcely exceeded two millions; leaving a balance of above one million and a half to be paid by this country to Russia. He would also have found that our imports in the same year from Prussia had greatly exceeded our imports from that country in any former year; whilst our exports to Prussia in that year were much less than they had been in many former years, and left a balance of nearly half a million to be paid to Prussia; *a country to which our exports formerly greatly exceeded our imports from it.* How were these balances to Russia and Prussia, partly arising from our import of corn, and amounting together to nearly two millions and a half sterling, paid? They

must have been paid (as the witnesses examined by the Committee had stated that payments for foreign corn would be made) *in money:* not by direct remittance of bullion to Russia or Prussia; but by what was equivalent to the remittance of bullion; namely, by bills, the representatives of money. Those bills could only have been paid out of the general balance due to this country, from foreign countries, as the result of *all* the trade of this country with other countries. That general balance in favour of this country, arising from *the whole of its trade*, enabled the payment of the bills drawn for the payment of the great balances thus due to Russia and Prussia *on the particular trade* with those countries; that payment having been necessarily effected by means of those *circuitous remittances by bills*, by which every trading country is commonly enabled to pay, out of the balances due to it, arising from its dealings with one country, the balances due from it upon its dealings with another country. Thus, though bullion did not, in the year 1826, flow out of this country, in consequence of the great importation of foreign corn in that year, (because great balances were due to this country from other countries, much exceeding in the whole the amount of the balances due from this country to Russia and Prussia; so that, after deducting from the balances due to this country, from other countries, the amount

of the bills drawn in payment of the balances so due to Russia and Prussia, a great surplus remained payable to this country; and therefore a quantity of bullion might flow into this country in the result of the whole of its dealings with other countries, notwithstanding the importation of foreign corn,) yet it is clear that a greater quantity of bullion might have flowed into this country, as the result of its general dealings, if no foreign corn had been imported.

The experience, therefore, of the year 1826 justifies the assertion in the 13th Resolution, and proves that the opinions of the witnesses were well founded; and that it is most probable that foreign corn imported into this country will always be paid for in money, and not by a corresponding export of British manufactures, or other commodities, to the places from which such corn shall be brought. Indeed, the present state of the countries in which corn imported into this country is likely to be produced, according to Mr. Jacobs' report, does not afford a prospect that the producers of that corn will be anxious to obtain British manufactures in exchange for their corn, unless they shall be raised into unexpected affluence by the mistaken policy of our ministers, seeking to encourage the cultivation of those countries, by the destruction of the cultivation of this country.

The ebb and flow of bullion, however, may

at any time arise from collateral circumstances, not properly connected with the regular commercial dealings of the country. It may arise from speculations in the public funds of this country, and of foreign countries; a cause to which another noble lord attributed the passage to France, and speedy return, of the casks of bullion mentioned by the minister.

The existence of great national debts, secured by the pledge of national funds, in the great countries of Europe and America, has created a new species of property, independent of, but frequently influencing, the commercial dealings of different countries in the interchange of commodities which are the proper objects of trade. They are sources from which capital may be easily drawn to answer the purposes of extravagant speculations in mercantile transactions; and they are often, in themselves, the objects of extravagant speculations, deranging the ordinary course of mercantile transactions; dealings in those national funds therefore frequently operate greatly on the traffic in bullion, as well as in other commodities.

As the necessities of a country in time of war may compel the purchase of arms, ammunition, or provisions, at any rate, so the necessities of a country, arising from any cause, may compel the purchase of bullion at any rate. Thus the necessities of the revolutionary government of

France compelled that government to obtain bullion from every other country of Europe, at any rate; and by extraordinary means, which could scarcely have been employed by any other government, they exhausted this country of bullion, at a time when it was in the enjoyment of peace, when its trade was in a flourishing state, and great balances were due to it in the result of all its commercial dealings, so that in the ordinary course of trade bullion would probably have flowed into this country instead of flowing out of it.

If the two millions of quarters of foreign corn, which the minister stated were imported in the year 1826, were *not necessary* for the maintenance of the population of this country; and if that population might have subsisted on the produce of the country, without the assistance of such imported corn, was not the million of pounds sterling, which the minister stated to have been paid for such foreign corn, so much money taken out of this country, and taken from the agriculture of this country, and given to the agriculture of other countries, to the benefit of those countries, and to the injury of this country, so far as its agricultural prosperity is beneficial to this country.

And was not this injury done to the agriculture of the country, without any corresponding benefit to the manufactures or trade of the country?

The benefit, if any, arising from reduction in the price of corn, extended to a population of ten or twelve millions; the injury fell *immediately* upon comparatively a few,—the farmers of the country; but *ultimately* on the whole population, as far as it tended to injure the cultivation of the country, without producing any increased export of manufactures, or any increased export of any objects of trade. The 100,000 starving manufacturers pretended to be relieved by it, could scarcely have obtained by it one shilling each.

The minister also thought fit, in his observations on the proposed Resolutions, to introduce the substance of what may be called a proclamation in favour of free trade, as tending to prevent smuggling, which had a few months before appeared in a periodical publication, the Quarterly (not the Edinburgh) Review, under the title, "The Corn Laws." The writer of that proclamation thought fit to put the cultivation of the country, and the manufactures of cotton and silk on the same footing. He considered both as mere objects of trade. But had not this country, by cultivation of its soil, become a wealthy and powerful country before the manufactures of cotton and silk were known in it? and if its cultivation shall be duly protected, may it not remain a wealthy and powerful coun-

try, though the manufactures of cotton and silk should be transferred to other countries? Is it not even probable that they will be so transferred, particularly to the extent in which they are now employed for the purpose of exportation, and even for internal consumption, if not protected by duties on foreign manufacture? Is not the silk manufacture at this time protected by high *ad valorem* duties? And *was it not purposed by the abandoned corn law to act upon a directly contrary principle—to impose the highest duty when the price was lowest, and the lowest duty when the price was highest: the very reverse of an* ad valorem *duty?* To give to agriculture the least protection when it most wanted protection. It was not proposed therefore to give the cultivators of the soil, and the manufacturers of silk equal protection; but directly the contrary.

But can the cultivators of the soil be considered, even in point of taxation, on an equal footing with the manufacturers of cotton and silk, whilst the enormous burdens which fall exclusively, or in very unequal proportion, on the cultivation of the soil, remain? Did the Minister consider how large a proportion of the price paid by the consumer of home-grown corn, is, in effect, the amount of public charges, thrown upon the land, principally, because, when those burdens were imposed, the cultivation of the

land was the *only source of wealth* which the country possessed; or because the owners of that land, for the public good, submitted to burdens which the manufacturers and traders refused to bear?

Did not the Minister also forget the precariousness of the production of cultivated land, from the effect of seasons rendering the produce of cultivation least when the burdens upon it press most heavily?

Can any man who has read the history of this country, or any country in the world, doubt that the cultivation of the soil is, and ever has been, the source from which the prosperity of every country has been derived, and that the wealth and strength of every country has risen or fallen as that cultivation has prospered or failed?

The strength of the country, for the maintenance of its power, and even for the maintenance of its independence, is importantly concerned in the great questions which now agitate the public mind—the Corn Laws and the Navigation Laws. The Navigation Laws were unquestionably founded on the necessity of considering the *strength and independence of the country as of importance far superior to the gain of the trader*. The Corn Laws were also framed with a view to the strength and independence of the country as considerations of much greater importance than the cheapness of bread. But at

the same time the framers of those laws acted upon the conviction, derived from experience, that (according to an old saying) "the *surest* way to procure *permanently* cheap bread, was to encourage the cultivation of the country for the production of corn."

It may be considered as now openly avowed, that the system adopted by the parliament of Charles II, and acted upon for a century with benefit to the country, is to be abandoned; and a new system to be adopted. What that new system is to be we are not directly told. The bill which had passed the Commons House of Parliament did not go so far as to abandon, wholly, the principle of the old system: it pretended to act upon it; but to act upon it in a way which might directly lead to its destruction. It seems manifest, therefore, that free trade in corn was the real object in view by the advisers of the measure then before the House; and the form of the bill by which it was proposed to carry that measure into effect, demonstrated that revenue was also an important object of that measure. Revenue to be paid in effect by the agriculture of the country; a partial land-tax to which the agriculture of the country would alone be subject.

An increase of the public revenue to supply the deficiencies occasioned by the mistake of ministers in not providing properly for the pub-

lic debt, before they allowed the repeal of taxes which might have been applied in its reduction, may be right, if fairly raised; but why is the revenue to be increased by a new burden on land in preference to any other means? and why is this burden to be so imposed as to oppress the land to a much greater extent than the amount of the addition made to the public revenue?

What are the means by which this additional revenue is to be obtained? Is it by a direct tax bringing all the produce of the tax, after the expense of collection, into the public coffers? No. It is by an indirect tax, in which the greatest share of the produce will be engrossed by speculators and brokers. Already have all the tactics of Change Alley been applied to wool, hides, and tallow; and the Bulls and Bears in those articles are as commonly noticed in our newspapers, as the Bulls and Bears in the public funds, and in the adventures of joint-stock companies. All this may be to the great profit of brokers. One of those gentlemen, who generally now are the only persons who have any knowledge in the articles of foreign trade, goes to a monied man: —"Sir, a great advantage may be made by adventuring in such an article." Wool or hides, or tallow, may be the article thus suggested. The speculator (himself wholly ignorant on the subject) gives the broker a commission to contract for a large quantity. The contract is made,

and the broker gains a commission. The extent of the contract thus made, and of others made in the same manner, is artfully made known in the market, and raises the price. The speculator is then advised to sell, and the broker gains a new commission. Another speculator is then acted upon in the same manner, and buys and sells, at profit or loss; the article still remaining undisturbed in the warehouse, even if the contracts are applied to an article really possessed by the sellers, and transferred to the buyers. But often this is not the case: the broker, however, in all cases, gains his commission, and he profits whether the speculators gain or lose.

If a speculator gains, his profit is added to the price of the consumer; if he loses, the consumer is perhaps where he would have been if no such speculation had existed. It is this *spirit* of gambling which produces importation to excess, and lowers the price of home produce. Vast quantities of wool, of hides, and of tallow, have been imported; but has any consumer bought a coat, a pair of shoes, or tallow candles, or those called wax or spermaceti candles, which are half tallow, at a cheaper rate? No. Who then has gained by such importations? Certainly not the consumer. The master manufacturers of these articles may have gained, but the labouring manufacturer does not find that he buys his coat, his shoes, or his candle, one farthing cheaper, in

consequence of the importation: or if cheaper, in no proportion to the loss sustained by the farmer. The importation, therefore, is not for the benefit of the public at large, and it is ruinous to the cultivator. Such would eventually be the effect of large importations of foreign corn. The cultivators and the owners of tillage-land would be greatly injured; the produce of the country would be greatly reduced; foreign countries might gain; dealers and speculators might gain; but *bread would not be eaten at a cheaper rate.*

And what would the revenue gain? Not a tenth part of the loss which would be sustained by the owners and cultivators of the soil. This mode of taxing the land would be as impolitic as it would be unjust, even in point of revenue. The injury thus done to the owner, and the cultivator of tillage, would extend to their labourers, and all dependent on them; would diminish their means of paying other taxes, and thus the revenue might, in the result, be diminished instead of being increased.

But manufacturers and traders might perhaps still be flattered with the fancy, that the destructive burden thrown upon agriculture was an advantage to them, until they found that their gains, instead of increasing, gradually diminished; and that a large portion of their old customers were ruined, or reduced to compara-

tive poverty, or driven out of the country; or perhaps that the horrors of a revolution were approaching.

The subsequent abandonment of this measure of revenue, because an amendment had been made which in no degree affected the *avowed* principle of the Bill, induced a hope that at least doubts were entertained of its expediency.

But though this Bill, which had produced so much contest, was abandoned, the hopes of the agriculturists that the policy on which it was pretended to have been founded might have been also abandoned, were shaken by a Bill brought up from the Commons, to permit, until the first day of May, 1808, certain corn, meal, and flour, to be entered for home consumption.

This Bill had apparently in view the benefit of those who had speculated in foreign corn, to a great extent, and whom it was supposed the ministers were willing to gratify by a temporary bill granting to them, in a limited degree, the effect of the measure which had been abandoned; and perhaps it had also in some degree in view a recruit of the empty treasury.

If the general measure was not to be pursued, there did not appear any very plausible pretence for this partial measure, at least in the extent to which it allowed the entry for home consumption of corn, meal, and flour, of all the several sorts specified in the bill. The preceding harvest, ex-

cept in one article, had been plentiful; and the country afforded a prospect of an approaching plentiful harvest. The supply, therefore, except in one article, was abundant; and the prices with that exception low. But the grass-crops had been deficient, and the farmers were generally under difficulty in procuring food for their live stock. The stock had before been generally reduced by loss of capital below the number necessary for the advantageous culture of their land; and lowering the price of their corn-crops, tended to increase this evil by diminishing their means of acquiring fresh capital, the only means by which they could restore their live stock to its proper amount. The importation of foreign wool had been to such an extent, as to render vast quantities of home-grown wool a burden instead of a benefit to the wool-growers.

In this state of the agriculture of the country, it was thought fit to authorize, by this new Bill, the entry for home consumption of any quantity, without limit, of foreign corn, grain, meal, or flour, which should be in warehouse on or before the first day of July, 1827; and any which should be imported from any British possession in North America on or before the first day of May, 1828, on payment of certain duties, regulated according to certain averages mentioned in the Bill; those averages being computed with references to the imperial measure, which had then become, by law, the standard of the country.

The objections to the general measure which had produced the foregoing Resolutions, applied to this partial measure, as far as it extended; and the rates of duties, and the manner in which those duties were increased or diminished according to certain average prices, stated in the Bill, were considered as liable to serious objections.

It was objected, that the Bill, though professedly temporary, was evidently intended to pave the way for a constant importation of corn from the British possessions in America at a very small duty; and that the effect would be to give to the cultivation of a part of the British dominions, which did not contribute to the general burden of the national debt, or to any of the other taxes or burdens affecting the corn-grower in the British islands, a decided preference to the cultivation of the British Islands; so that the cultivators of America should be able to sell their corn in Britain, with considerable profit, at a rate which might deprive the British corn-grower of all profit from his expense and labour. The duty bore no proportion to the amount of taxes, and other charges imposed upon a similar quantity of British-grown corn; it had no relation to the average price in Britain; and the Bill therefore enabled the American, if a plentiful season should occur, to produce a glut in the British market, which might

be utterly ruinous to the British farmer, and reduce his stock in corn to the condition in which he now finds his stock of wool—a burden instead of a benefit; and disable him from properly cultivating his land in the succeeding year. If this were to become a permanent measure, it must tend to drive the British farmer, with the remnant of his capital, to America, that he may have the benefit of cultivating corn there to send to this country.

With respect to foreign corn, the duty was, *in some degree,* regulated by the average prices in Britain; but with *a manifest tendency to encourage,* what is already a great evil—*speculating in corn.* The markets in Britain are now very much, indeed almost wholly, in the hands of corn-dealers. They can, in many places, raise or lower the averages at their pleasure. If the object of the Bill had been to supply the British market only when the home-grown corn was not sufficient for that supply; or to obtain, as nearly as possible, an equal rate of prices from harvest to harvest, the framers of it would have aimed at preventing any frauds in raising or depressing the averages. But this Bill offered the greatest temptation to speculators to play with the averages, according to their own interests, in the manner most injurious to the public interests, and particularly injurious to the corn-growers of this country. *It rapidly reduced the amount of*

duty, when the average amounted to certain rates; thus holding out to the speculators a temptation to withhold their corn from the market, until, by deficiency of supply, they should have raised the price to those rates, and then to enter their imported corn at a low duty, though they might still withhold that corn from the market, or bring it to market as might best suit their interest. It was scarcely possible to imagine a *more sure temptation to fraud and extravagant speculation.* But the economists hold that speculation is the life of trade; that the gains of all traders (except corn-growers) cannot be too great, whatever consumers may suffer; and that the only trade whose profit ought to be brought as low as possible is that of the *corn-grower*; the *corn-dealer* being at the same time left to enhance the price on the *consumer* by any art or contrivance.

It should be recollected that although the averages purport to be struck upon actual sales, the law does not compel, *and cannot compel,* actual *bonâ fide* delivery upon those sales, particularly of warehoused corn. The sale is often a nominal transfer, without any real delivery; a sale for the purposes of speculation, and not for actual consumption. It may not even be a sale on speculation, but a mere contrivance to raise the average; and this may be contrived even if actual delivery should apparently take place.

In the great markets the same corn may be, and often has been, sold, and thus enter into the averages, ten times, under different names, before it passes to the consumer. No regulations can prevent this. Requiring actual delivery by the strongest provisions, would not prevent it. It might be actually delivered by one speculator to another several times over, with or without *bonâ fide* sale, before it might come to the hands of the consumer. This now takes place to a great extent in home-grown corn in its passage from the grower to the market intended for its consumption. Thus, for the supply of any of our great manufacturing towns, a corn-dealer purchases of the farmer, on credit, by bills; and then sells, at the first stage of its transit to the destined market, at an advanced price, to another corn-dealer, on similar credit. The corn, travelling another stage towards the place where it is to be consumed, is sold at the second stage, at an advanced price, to a third corn-dealer, all on credit; and it may pass in the same way to a third stage, and be sold in like manner, and sent by the last purchaser to the market where it may be finally sold to the consumer; or even there it may be sold two or three times before it comes to the consumer. The difference between the price paid to the farmer, and the price for which it is sold to the supposed consumer at the place of final destination, has been calculated, upon an average,

at at least five shillings upon a quarter of wheat. The actual consumer indeed pays still more; for he pays also what is called the miller's profit, but which is, in reality, the corn-dealer's profit in a great degree: for the greater part of the mills in those districts which are districts of considerable consumption, are in the hands of corn-dealers; and the price of bread is not regulated by the real price of corn in any market, but by the manœuvres of corn-dealers and millers.

This complication of dealings in corn is, perhaps, in some degree necessary for the supply of all parts of the country; but it affords great opportunity for frauds in the averages: and the assessment of duties, diminishing rapidly as the averages are raised, affords great temptation to frauds, and great temptation to speculators in corn. If *the supply of the country* had been the real object of the Bill last alluded to, the supporters of that Bill would have allowed an amendment which was negatived. That amendment proposed that the duty imposed by the Bill when the average price of wheat should be sixty-two shillings and under sixty-three shillings the quarter, (imperial measure,) should not be diminished until the average had risen much higher; whereas by the Bill the diminution was so rapid as to encourage the withholding of corn from the market for the purpose of increasing the average price, and thus lowering the duty. If

the supporters of the Bill had really meant only the supply of the country, and not the advantage of the speculators in corn, (and had understood the advantage which might be taken by the speculators, which perhaps they did not, being unwilling to listen to any objection to their Bill,) this amendment would have been adopted; for they could not deny, and did not attempt to deny, that the Bill, as framed, held out a strong temptation to fraud on the averages; indeed, *they did not condescend to listen to the objection.* The prices have not risen to the points at which this temptation to fraud would have occurred, because, in truth, *the country was amply supplied with corn,* except in one article, to which, if the Bill was on that ground necessary, its provisions ought to have been restricted. It seems manifest, therefore, that in this measure the advantage of the speculators in foreign corn was much more consulted than the general interests of the country, unless raising a revenue upon the importation of foreign corn can be deemed a measure for the general benefit.

Ministers in this country have often had a difficult task; and that difficulty has been, of late years, greatly increased by the practice of forming a numerous cabinet, in which there may be persons of very opposite characters, and guided by very different views; and where some of the members may be considered rather as

voters than as *advisers*. It seems not easy otherwise to account for the measures adopted respecting the Corn Laws in 1813 and 1815; and the opinions on that subject expressed by Lord Liverpool in 1820, contrasted with the opinions now attributed to him, as approving an abandonment of the measures of 1813 and 1815, and adopting the measures lately pursued, including the abandoned bill. Such, however, is now the avowed object of ministers; and it is impossible to doubt that a total change of policy on this subject is in view, considering the language of a leading member of the cabinet, in the few observations which he made upon the motion for referring to a committee the Resolutions which had been offered for debate upon the general policy respecting the importation of foreign corn.

This change of policy indicates an important change in the constitution of our government. Indeed, there has been, in effect, a great change gradually produced in the course of many past years, but rapidly of late. Within the last fifty or sixty years, the number of peers has been more than trebled; and thus a large portion of landed property has been taken out of the other house of parliament, and the importance of members of that house, who formed, what was formerly called the landed interest, has been much reduced. It is nearly lost.

The influence of what was formerly called the

landed interest in the House of Commons is gone. Many even of the possessors of considerable hereditary landed property, are become, in effect, traders; and have the interests, as well as views, of traders. It may therefore be said, with a considerable degree of truth, that, *already*, "The landed interest is put down."

It has, in effect, no voice in the governmen, of the country equal to its real importan ce so far as that government is under the controul of one of the two Houses of Parliament; and at the same time, the other House has lost its ancient influence, and has nearly become a mere echo of the voice of the first; and the ministers of the crown are therefore wholly in the power of the House of Commons, and must be submissive to its will. We still indeed retain the *form* of that constitution, declared by the statute of the 15th of Edward II. — "*That all matters to be established for the estate of the king, and of his heirs, and for the estate of the realm, and of the people, ought to be treated, accorded, and established in parliament, by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as it had been before accustomed;*"—but the manifest tendency of the principles on which various measures have been of late proposed, and particularly those measures which have for their object the reduction of the value of agricultural

property, compared with the value of other property, and charging agricultural property with burdens beyond the just proportion which it ought to bear, compared with other property, is to destroy the just balance of the ancient constitution of government so declared; and by destroying that balance, finally to place the government (even if it should retain its ancient form) under the predominant control of

A COMMERCIAL REPUBLIC.

THE END.

LONDON:
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A

LETTER

TO

THE EARL OF CARNARVON,

ON THE RIGHT HON.

THE HOME SECRETARY'S

FINANCIAL STATEMENT

OF

Friday, the 15th of February, 1828.

Pht.

By PHILIP PUSEY, Esq.

LONDON:

JAMES RIDGWAY, 169, PICCADILLY.

MDCCCXXVIII.

LONDON:
PRINTED BY T. BRETTELL, RUPERT STREET, HAYMARKET.

A LETTER, &c.

MY DEAR LORD CARNARVON,

AFTER our conversation on the Home Secretary's late Financial Statement, I was induced to look into the public accounts on which that Statement was grounded. It appeared to me, in the course of this inquiry, that, while the numbers which stand in the printed copy of his speech are, no doubt, to be found in the papers annually printed for the House of Commons, though, I confess, I could not find them all, still the promise which they hold out to the eye is by no means kept to the understanding. Knowing, then, the view which you entertain of our financial history during the present peace, I thought that some of its details might (notwithstanding the dryness of the subject) prove interesting to you, as they have to myself, on account of the important results to which they lead.

On the 15th of February, the Home Secretary traced the gradual reduction effected in our national incumbrances since the conclusion of the war, resting this estimate upon the opening of

the years 1816, 1823, and 1828, as the first, the central, and the final points of his comparison. From that speech I will extract the following words, which contain the minister's own summary; and, having done so, will avoid the tedium of endless quotation, by referring you, for his other statements, to the printed copy of his speech*.

"The total decrease then, Sir, of the capital of the unredeemed funded debt, since the year 1815, has been 38,835,000*l.*; that is to say, last year, as compared with the year 1815, we had *appropriated* for the redemption of the funded debt, thirty-eight millions; and in 1827, also, the unfunded debt, as compared with its amount in 1815, was decreased by 9,770,000*l.*; so that the decrease of the debt, funded and unfunded, was, in round numbers, 48,608,000*l.*

"The total decrease of annual charge, on account of the funded and unfunded debt, since 1815, appears to have been 4,424,000*l.*; that is to say, a less amount on account of the charge for the total debt, as compared with its amount in the first year of peace, 1815, by the considerable sum of *four millions.*"

Though this diminution of our capital debt will not appear large, when we recollect that, in these eleven years of peace, we enjoyed, for the first six years, at least in name, a sinking fund, varying from thirteen to fifteen annual millions, and during the latter five were assured, that most indubitably five superfluous millions have been

* See Appendix.

yearly applied to that fund; still, as the illusory nature of this operation has long been pretty well understood, such an amount of reduction might perhaps be the subject of national congratulation. Unfortunately, however, this numerical variation between the accounts of the two years, 1816 and 1828, exists only on paper.

I do not impute to Mr. Peel the slightest indirect attempt at misrepresentation of our public finances; but his love of truth will excuse the attempt to clear up some misconceptions, which may easily arise from the view of our fiscal embarrassments, which he has laid before us.

It will, I think, appear, upon a closer investigation, that the enormous debt, accumulated at the end of the year 1815, so far from being in any degree diminished, has, on the contrary, very largely increased upon us.

I propose, first, to examine our financial situation, on the supposition that the pounds sterling enumerated in the accounts of the year 1816 and of the present year, are the same pounds sterling. Even in this view, it will appear that the diminution of our debt has been, though unintentionally, yet much overstated.

It will, afterwards, be necessary to examine the value of the pound sterling itself, at the different points of comparison.

There is a third consideration, without which, any estimate of an annuity is incomplete, and which indeed is the primary condition of its

valuation: I mean the current rate of interest; but with this part of the subject I will forbear to weary your patience.

On the 1st of February, 1816, the capital of our unredeemed funded debt amounted to 816,000,000*l.*, of which 792,000,000*l.* stood in the English accounts, and the remainder, stated in Irish money, was payable in Dublin.

Of the 792,000,000*l.*, about five hundred and eighty millions bore interest at three per cent.; about seventy-five at four; and there were one hundred and thirty-six millions at five. The total Irish debt, of which a separate account was kept until 1817, was, in nominal capital about twenty-four millions of English pounds at different rates of interest. The annual charge on the whole was about twenty-eight millions and a quarter.

But in the annual charge of our funded debt is generally included a considerable amount of annuities, which being terminable, and having been for the most part thrown in as douceurs, on occasion of various loans, do not appear in the capital of that debt.

I find that the value of the main article in this account, the long annuities, about thirteen hundred and fifty thousand per annum, was, even in 1826, though they are terminable in 1860, as much as 26,800,000*l.* of money. Another considerable item, in 1816, was the imperial terminable annuities, amounting to 230,000*l.* yearly. The remainder of the annuities generally included with these in the

annual charge of the funded debt, are upon lives, and were at that time rather more than 100,000*l.* But another class of life annuities, which has generally been kept in the back ground, and which now, I think for the first time, enters into a ministerial statement, are those charged upon the sinking fund, having been assigned, by the commissioners, in exchange for capital stock transferred to them, and thenceforth considered to be redeemed. These annuities amounted, on the 1st of February, 1816, only to 199,000*l.* per annum. Since that time however, more than six millions* of stock have been transferred on this account to the commissioners, and their annual charge on the sinking fund has now increased to near† six hundred thousand pounds. But I will not anticipate the close of a mournful tale. Mr. Peel has, very properly, classed these with the other terminable annuities.

To complete the general statement of our national embarrassments at the close of the last war, it only remains to state the amount of the unfunded or floating debt; but in this part of the subject I have been, throughout, unable to arrive at any very positive conclusion; nor have I ever been able to find any one official or non-official statement of it, at this or succeeding periods, that

* The exact amount I cannot give, as the quantities of stock so transferred in 1822 and 1827 do not appear.

† 589,000*l.* 5th of January, 1827, besides, I believe, some other small items.

agreed with another. Of its amount, on the 5th of January, 1816, I find the following conflicting statements:—

According to Lord Goderich's Speech in the House of Commons, March 3, 1823	£.48,511,000
Finance Accounts of the House of Commons	£.48,725,000
The present Home Secretary	£.44,544,000

This discrepance you will find to be still more striking when we attempt to estimate the amount of the floating debt at the middle point of the comparison.

I now propose to recall to your recollection, my dear Lord, the leading financial operations, which occurred during the first six years of the peace, as rapidly as the nature of the subject will allow.

In 1816, the Bank of England advanced to Government three millions at 3 per cent., to be repaid to it in 1833. Now this creation of debt differs from other modes of national borrowing, in the circumstance, that the nominal amount of debt created and the real amount of money received are the same. Of course an increase of our debt, to the amount of three millions, appears under this head in the accounts of the year, and, since, much larger amounts of stock were, on the other hand, purchased by the sinking fund, a corresponding value of 4,800,000*l.*,

3 per cent. consols, may be considered as redeemed by this loan; consequently, a nominal reduction of 1,800,000*l.* of our capital debt would be effected by this change of its denomination. However, as the money so borrowed is not intended to be repaid, the capital which represented the excess of the market rate of interest, or 5 per cent. above the rate paid, 3 per cent., may be considered as a tax levied on the Bank by Government. The reduction, then, in the capital debt, effected by the transaction, really resulted from a supply raised, though from a kind of supply which will be but occasionally attainable.

In 1817, the English and Irish revenues were consolidated; and, henceforth, the debt of the United Kingdom appeared in one sum, and one denomination of money, upon our national ledger.

On the 5th of January, 1818, our total unredeemed funded debt appeared, by the finance statement, to be 776,742,000*l.*, about forty millions less than it had been two years before in 1816, and, by the bye, nearly *one million less than it is at this day.* The Chancellor of the Exchequer*, accordingly, in the ensuing Session, congratulated Parliament on this reduction in the following terms:—

" Gentlemen are, perhaps, not aware of the progress that has been made by the Sinking Fund during the peace. Such

* Mr. Vansittart.

has been the progress of that fund, that no less than *fifty* millions of capital stock have been reduced by it since November 1815 *."

It was forgotten, however, that the official unfunded debt had risen from forty-eight to sixty-six millions, and that the balances in the Exchequer had been also diminished in the same time from 15,729,000*l.* to 10,323,000*l.* which will give apparently, for I always speak with fear and caution of the floating debt, an increase of about twenty-three millions on the debtor side of that account. Since the mean of the average prices of 3 per cents. for the two years is 68*l.* 10*s.*, this amount of twenty-three millions of money valued in 3 per cent. stock would be thirty-three millions out of the forty which thus appeared to have been reduced since 5th January, 1816. In fact, the sinking fund of thirteen or fourteen annual millions had, for the two years in question, been entirely fed with Exchequer Bills. However, the unmerited preference was quickly redressed. On the same occasion it was voted, that twenty-seven millions of these Bills should be funded; and now the funded debt recovered nearly its original size, by the consequent addition of nearly thirty-five millions capital stock.

There was also, at the same time, a small

* Parliamentary Debates, April 20, 1818.

contrivance for raising three millions of money without any such addition of nominal amount. It was proposed that the interest of 27,272,000*l.* stock should be raised from three to three and a half per centum, on condition that the holders thereof should pay down in money 11 per cent. on the capital, for the additional half per cent. of interest which they were to receive. This took place accordingly, and three millions were raised at about four and a half per cent.; surely the Finance Minister took a very favourable view of the operation, when he stated, that "the public would be a gainer on the whole transaction by three millions."

But the farce of the sinking fund was kept up for one year more. With a large part of the borrowed millions its commissioners repurchased perhaps the identical stock which the Government had lately sold. But when the Government carried their millions of stock into the market, the glut was immediate, and the value of their commodity sank rapidly. When the loan, however, had been disposed of, the stocks gradually recovered, and, as is well known in the city, nothing contributed so much to the elevation of their price as the steady demand of the commissioners. Thus did the nation's millions pass through the Stock Exchange, as the hundreds of the gamester over the hazard table; but if the pull of the club-master be one sixty-eighth, the loss on the national treasure was often perhaps a twelfth. Thus, on

the 4th of June, in the succeeding year, it was intimated, that a loan of twenty-four millions would be wanted. Before, however, any terms were arranged, Government at last determined to act upon the clause originally introduced by Mr. Fox into the Sinking Fund Act, by which they were empowered to borrow from the sinking fund. When the contractors were, to their sorrow, informed of this intention, the price of 3 per cents., which the moment before was 65, rose in two days to 70 and 71, and a contract for a twelve million loan was effected, at an advantage of at least three millions to the public*. For it had been at last discovered, that though the nominal amount of the sinking fund was fifteen millions and a half, two millions only could be regarded as a real surplus, since there was a deficiency of thirteen millions and a half in the supplies required for the current expenses of the year. At the recommendation of the Finance Committee, these real two millions were made up five, by an increase of taxation to that amount, and by a solemn vote of the House of Commons†, it was determined to be "absolutely necessary, that there should be a clear surplus of the income

* Mr. Grenfell's statement in the House of Commons, March 11, 1823. Mr. G. also states, that had Government acted upon Mr. Fox's clause from 1793 downwards, the country would have saved fifty millions of money.

† June 9, 1819.

of the country beyond the expenditure, of not less than five millions."

The requisite supplies were now taken directly from the sinking fund, without passing through the circuitous and sandy channel of the Stock Exchange. At least such seems to have been the intention of the ministry; though this intention was not fully acted on. The death-blow of the old sinking fund had now been struck; but the cumbrous machine remained three years longer, while the tide of national prosperity had ebbed from beneath it.

In the four years, 1819—1822, the successive sums of twelve, again twelve, thirteen, seven millions and a half, were thus by this left-handed policy of the nation borrowed from its right hand. But, besides these fictitious loans, seventeen millions of money were also raised, and seven millions of Exchequer Bills funded.

These seven millions of Exchequer Bills were, in 1820, funded in the 5 per cents., being converted into 6,930,000*l.* of that stock. But since the purchases of the commissioners still continued, and those purchases were almost exclusively of 3 per cents., the new fives may be considered as having displaced an equal value of the other stock. Now these 6,900,000*l.* fives were, according to the average of that year, worth about 9,500,000*l.* 3 per cents. reduced. But, at a given amount of taxation and of unfunded debt, the redemption of the threes could not have taken place without a

corresponding creation of the fives. The reduction, then, effected thereby in the capital was merely a commutation, not a diminution of debt. The nominal excess of the threes which disappeared above the fives which replaced them in the national accounts, is about 3,600,000*l.*, which of course will enter into the balance to be struck at the end of the period. To this we are now fast approaching. I will only mention, that between the 5th January, 1816, and the same day in 1822, 3,268,000*l.* stock had been transferred to the sinking fund, in exchange for life annuities. What was the amount so made over in the remaining year does not appear, as there was a new form of accounts on the 5th January, 1823. But if we estimate that part of the entire stock so transferred in seven years, which was really extinguished by the failure of some lives and the deterioration of others, as equal to the quantity transferred in the last year, and to half a million more (and we shall probably have made a very ample allowance), about 2,750,000*l.* must be considered as still remaining on the 5th January, 1823. There is also a small item of seven hundred thousand pounds transferred on account of land-tax redeemed within the same time.

We are now come, and I fear you will think it full time, for there is little to interest either narrator or hearer in these monotonous transmigrations of debt, to the final operation of this period — I mean the reduction of the interest

on the 5 per cents. in 1822; and you must allow me to enter a little into the details of the transaction, on account of a remarkable mis-statement which it occasioned in the ensuing session of Parliament. In 1822 then the amount of the old Navy 5 per cents. was one hundred and forty-three millions. The Chancellor of the Exchequer proposed to reduce the interest upon this amount from five pounds to four guineas per cent.; that is to say, they were to be converted into 4 per cent., with an additional capital of five to the hundred as a sort of douceur. The holders of one hundred and forty millions* accepted the offer, and received in return for their stock, which was cancelled, one hundred and forty-seven millions of new fours†. The holders of the remaining two millions and three quarters declined the proposal, and were paid off at par‡. At the same time about § nine millions of similar stock in Dublin received an addition of half a million nominal capital by a similar reduction of interest.

The diminution of interest on unfunded debt effected by this operation, seems to have been twelve hundred thousand yearly. The number appears to me to be 1,196,000*l.*‖; but it was stated

* 140,249,000*l.* † 147,263,000*l.* ‡ 2,737,000*l.*

§ 9,198,000*l.* fives.—9,658,000*l.* fours.

‖ This amount of diminution is calculated upon the above amounts of capital stock, taken from Mr. Fairman's work on the funds.

by a minister of that day to be more than thirteen hundred thousand.

We are now arrived at the date of the 5th January, 1823, the half-way house of the tedious journey on which I am conducting you. Here I must extract for you the then Finance Minister's retrospect of the ground which we have passed over: it is contained in the following extract from his speech in the House of Commons, March 3, 1823:

"On the 5th January, 1816, the amount of the unreduced funded debt was 816,311,000*l.* The amount of the unfunded debt, the Exchequer Bills, Irish Treasury Bills, and Ordnance debt, was 48,511,000*l.*; *the charge upon both*, 32,340,000*l.**

"The state of the same account on the 5th January, 1823, was as follows: the amount of the funded debt was 796,530,000*l.*; of the unfunded, including all the items of what are technically called Exchequer Deficiency Bills, 43,526,000*l.* The charge upon the first of these sums was 28,100,000*l.*; upon the second, 1,162,000*l.*; making a total of 29,262,000*l.*

"If the Committee compare the amount on the 5th January, 1816, and on the 5th January, 1823, they will find to demonstration that, in the funded debt, 19,701,000*l.* have been reduced, and in the unfunded 4,984,000*l.*; making a total of 24,766,000*l.*, or, to speak in round numbers, a reduction of twenty-five millions; which, upon an average of the seven years, amounts to 3,500,000*l.* each year.

"*I can further state, that this reduction would have amounted to ten millions more, were it not for the conversion of the 5 to the 4 per cents.; an operation, the effect of*

* I know not how this estimate is to be reconciled with that of our Home Secretary, which is 33,679,000*l.*

which was to add to the unfunded debt two millions seven hundred, and to the funded seven millions. Were it not for that financial operation, the reduction of debt since 1815 would have amounted to thirty-five millions."

We have seen that of the hundred and forty-three millions of English fives, and of these only the minister speaks, one hundred and forty were converted into one hundred and forty-seven new fours, and nearly three millions were paid off. Yet the minister said that an addition of ten millions was thereby made to the amount of our debt. If Lord Goderich looked back at this passage of his own speech, he would smile, I think, at the *double emploi* into which he here slipped. For, certainly, the three non-assented millions were either paid off or not, and they could not be charged under both heads. The fact is, they were paid off. And how does their account stand in the funded debt? There were before one hundred and forty-three millions; there are now one hundred and forty-seven millions: difference, four millions. If I mention these, and perhaps some other small slips of this amiable nobleman, it is that I would gladly cover any larger errors of my own under the protecting shadow of a finance minister's name. And, indeed, I must now again draw largely on that protection in attempting to estimate the amount of our floating debt at this period; and I think you will agree with me that my case is in

every way the stronger, inasmuch as no name is freer from a taint of indirectness than that minister's.

We have seen that, according to the Chancellor of the Exchequer's statement, on March the 3rd, 1823, the amount of the unfunded debt, on the 5th January of that year, *including all the items of what are technically called Exchequer Deficiency Bills*, was 43,526,000*l.*

But I observed that our present Home Secretary, in presenting a similar view of the gradations of our debt on the late occasion, states "the whole of our unfunded debt, including Exchequer Bills (under various classes), Public Works, Irish Treasury, Deficiency Bills and out-standing," amounted, on the 5th January, 1823, to 42,209,000*l.*

In this dilemma I had recourse to the Finance Accounts of the year, printed by order of the House of Commons. You will feel for my embarrassment, when I tell you, that I there found the following entry:—"*Total unfunded debt, and demands outstanding*, 41,485,000*l.*" I was nonplussed, and gave up the matter.

But I accidentally found a speech of Mr. Robinson's, on March 13th, 1826, in which he again proceeded to trace the history of our incumbrances. In this speech, among some other curious particulars which I will by and by submit to your inspection, appears the following statement:—"*On*

the 5th of January, 1823, *the unfunded debt was* 36,281,000*l.**" This I own, my dear Lord C., did comfort me. It naturally occurred to me, that if the Home Secretary differed so largely from the Finance Minister, and the Finance Minister differed yet more largely from himself, small blame could attach to a humble individual for any inaccuracies of which he might be guilty, from an erroneous selection among equally weighty authorities. Shall we then take a mean of the four amounts; or shall we rather adopt the solution of a cautious personage, who, when he was asked whether the sun goes round the earth or the earth round the sun, replied, that it was sometimes one and sometimes the other? However, as it is, after all, much more comfortable to have even a wrong opinion than to have none at all, we will, if you please, adopt the numbers which stand in the papers printed for the House of Commons, until the Finance Committee lets us into the real state of the case. Upon our present Home Secretary's authority I will rest the other items of debt at the two points between which we must now strike the balance.

* This diminution is effected by the omission of the deficiency bills, but neither the fact nor the reason of the omission is stated.

FUNDED DEBT, ACCORDING TO THE HOME SECRETARY'S LATE STATEMENT.					UNFUNDED DEBT.				
	Capital of Unredeemed Funded Debt.	Charge on unredeemed Funded Debt.	Charge on unredeemed funded Debt, with Annuities.	Total charge on funded and unfunded Debt, with Annuities.	According to the Home Secretary's late Statement.	According to the former Chancellor of the Exchequer's Statements.	According to the Annual Finance Accounts.	Balance in the Exchequer.	Difference between Official unfunded Debt and Balances in the Exchequer.
	£.	£.	£.	£.	£.	£.	£.	£.	£.
Jan. 5, 1816	816,910,000	28,278,000	30,483,000	33,679,000	44,544,000	48,511,000	48,725,000	15,729,000	32,986,000
Jan. 5, 1823	796,530,000	26,419,000	28,596,000	30,027,000	42,209,000	43,526,000	41,485,000	7,797,000	33,688,000
						36,281,000			
Decrease	19,780,000	1,859,000	1,892,000	3,652,000					
								Increase	702,000

To the actual diminution of the funded debt there must be added, on account of the increase of nominal capital by conversion of fives into fours, including the Irish, 4,665,000*l.*

There are, however, among the transactions of the last few years, some which more than balance this item.

Funded capital diminished, by creation of fives in 1820	£.3,600,000
Ditto, by land tax redeemed	700,000
Ditto, by conversion into life annuities of stock, of which remaining value supposed to be	2,750,000
	£.7,050,000

I know not what addition should be made to this set-off for stock purchased with unclaimed dividends, but there will be a deduction of at least two millions and a half to be made from the apparent diminution of nineteen millions three quarters, leaving us a nett diminution for the seven years, from 5th January, 1816, to 5th January, 1823, of rather more than seventeen millions. This amount, if it consisted entirely of 3 per cents., would be worth, at the price of 73*l.* 14*s.* (the commissioners' average for that stock having been 73$\frac{7}{8}$), 12,820,000*l.* We may call it thirteen millions, to allow for the very small quantity of higher stock redeemed; and thus it appears that the whole

amount of funded debt reduced, in the first period of six years, scarcely equalled the lowest nominal amount of the sinking fund for one of those years.

The total diminution on the charge of the funded debt (column II.) is 1,859,000*l*. Out of this amount twelve hundred thousand are on account of the reduction of interest on the 5 per cents. Large, however, as the saving appears to be, it may, I think, without a paradox, be doubted, whether a saving of this kind is always beneficial to the debtor whom it appears to relieve.

For let us suppose a merchant who from a capital of fifty thousand pounds derives an income of five thousand per annum, profits being at ten, and interest at five per cent. (such a merchant is, I fear, now a very ideal personage), and let him owe ten thousand pounds to a capitalist, for which he will pay, by supposition, five hundred pounds in interest yearly. Let profits fall to eight, and interest to four per cent. He will now pay four hundred a year instead of five to his creditor. But if his head clerk congratulated him on this considerable decrease of annual charge, he would mislead his master much. That head clerk would be penny wise and pound foolish. For his master will now indeed pay annually four hundred instead of five, but he will receive four thousand instead of five. He will gain a hundred on one side, and

lose a thousand on the other. He will lose a clear nine hundred per annum. His means of present enjoyment, or of redemption of his debt, will be diminished by that annual amount.

I do not wish to apply this case too strictly to our national concerns, for I believe that such applications of single cases are premature in the present state of political economy, but I fear that it would not appear devoid of analogy to our English men of business in general.

To return however to our subject; when we have deducted this decrease of interest (1,196,000*l.*) from the total diminution (1,859,000*l.*) there will remain a reduction of only 663,000*l.* effected by our own economy, and even from this amount there is a deduction to be made for the conversion of perpetual into life annuities.

In making the same estimate for the third column, the interest on funded debt and annuities, we must increase our deduction by two hundred thousand yearly (211,000*l.*), on account of the imperial terminable annuities, which had died a natural death in the year 1819.

Gross diminution	£.1,892,000
Deduction	1,401,000
	£.491,000

I have made no allowance for increase of charge by the conversion of perpetual annuities into sink-

ing fund life annuities; because, I should think that the amount of these annuities and of the Exchequer life annuities, which expired within the period, must be sufficient to balance such increase. The reduction effected by our own industry will be half a million.

The diminution on the gross charge of our funded and unfunded debt, with the annuities, is very considerable; but there is also a very considerable additional deduction to be made, besides the two already stated.

In the year 1815 the interest on Exchequer Bills was $3\frac{1}{2}d.$ per diem, it is at the present time $2d.$, being a reduction as from 7 to 4, or of $\frac{3}{7}$, not very much less than one-half. The Chancellor of the Exchequer stated, on June 20th, 1817, that the interest had fallen at that time from $5\frac{1}{4}$ to $3\frac{3}{4}$ per cent., being a fall as from 7 to 5. In Mr. Fairman's excellent work on the funds I find, however, that on January 5th, 1823, the interest was $2\frac{1}{2}d.$ and $3d.$ per diem. It will be better, therefore, not to strike the balance on this head, until we come to the final period of January 1828. There now only remains the capital of the unfunded debt, with regard to which I have already stated my extreme difficulty; I know not if it be a safe course, it seems a simple one, only by way of approximation, to take the official amounts of that debt from the parliamentary accounts, and deducting from them the

respective balances in the Exchequer to compare the remainders*. By this process there would be a balance against us in 1823 of seven hundred thousand pounds. I do not think that this calculation can be very wrong; for the arrears of property-tax in January 1816 were many millions; and Lord Bexley stated, in Parliament, that these arrears had been of very great service in the ensuing years.

There are two small items of this account only which remain to be set against each other; I mean the two million and three quarters for paying off non-assented fives, which Lord Goderich adds to the side of the unfunded debt, to which must be opposed the three millions unaccounted for, raised in 1818, by adding a half per cent. to the interest on twenty-seven millions of 3 per cents. Thus I might, with some probability, assume an increase of one million against us on this head of account; but I think that, at least, the case seems strong against any real decrease of our floating incumbrances. To this conclusion, then, we are at length arrived, that in seven years of profound peace the amount of reduction effected in our debt by our own economy was about thirteen millions sterling, not more than the least of the sums which seemed to be yearly set apart for that purpose. Little as this decrease must appear, I fear, however, at this day we have good reason to

* See three last columns of Table, page 22.

wish that the same proportion had been observed in the latter period of the peace.

January 5. 1823. to January 5, 1828.

This period opens with a new finance minister, a new sinking fund, and another new device; but notwithstanding these new ways of payments, we shall find at its conclusion our old debts. The old sinking fund of fifteen apparent millions is done away, and a new one established in its room, purporting to consist of five superfluous annual millions; but, as if by some fatality, there arises at the same moment another financial contrivance, which in great measure nullifies this sacred fund at its birth. This device, the naval and military pensions commutation, had been legalised in the preceding sessions of 1822, but did not really come into operation until the year 1823.

The pensions payable to naval and military officers or their widows, which, in 1792 had been only about six hundred thousand pounds, had now, partly through the length and extent of the late war, and partly through the improvidence with which their rate had been increased, risen to the large amount of five millions. This charge was of course liable to annual decrease, on account of the annual decrement of human life. With a view, however, of lightening immediate taxation, and particularly, I believe, of relieving the agricultural

interest, it was proposed, in 1822, to pay to some company, or other contractors, a fixed annual sum of two millions eight hundred thousand pounds for forty-five years; the new annuitants engaging on their parts to make in return certain annually decreasing payments, so calculated as probably to cover the continually decreasing amount of pensions due. The following table contains the annual payments expected to be made in return for a fixed annuity of £.2,800,000*l.* for forty-five years.

1st year	£.4,900,000	24th year	£.1,830,000
2nd "	4,700,000	25th "	1,780,000
3rd "	4,540,000	26th "	1,630,000
4th "	4,410,000	27th "	1,530,000
5th "	4,290,000	28th "	1,430,000
6th "	4,110,000	29th "	1,340,000
7th "	4,000,000	30th "	1,250,000
8th "	3,860,000	31st "	1,170,000
9th "	3,720,000	32nd "	1,080,000
10th "	3,590,000	33rd "	1,000,000
11th "	3,450,000	34th "	920,000
12th "	3,310,000	35th "	860,000
13th "	3,180,000	36th "	780,000
14th "	3,050,000	37th "	720,000
15th "	2,910,000	38th "	660,000
16th "	2,790 000	39th "	600,000
17th "	2,660,000	40th "	540,000
18th "	2,530,000	41st "	490,000
19th "	2,410,000	42nd "	440,000
20th "	2,290,000	43rd "	390,000
21st "	2,170,000	44th "	350,000
22nd "	2,000,000	45th "	300,000
23rd "	1,950,000		

This measure was defended by our Government, on the ground, that since the nation had incurred

the expenses of the late war partly in defence of posterity, it was fair that posterity should pay its portion of the cost. I own that this reasoning appears to me too ingenious to be just. It was moreover vainly answered in the House of Commons, that there might be perhaps no objection to the principle, but that the sinking fund was formed on a contrary principle, namely, that of burthening ourselves for the relief of posterity; and that the co-existence of these two machines was absurd, at least in as far as they stultified each other. That they do so stultify each other, I think the following short table will satisfactorily prove. It is drawn up, on the supposition that the annuity of 2,800,000*l.* is inserted in the national expenditure, and the receipt, which is 4,900,000*l.* in the first year, is also included in the national income. In this manner our accounts are actually kept, and it is the difference between this gross receipt and gross expenditure which supplies, when it can supply, the sinking fund of five millions yearly.

Effect which would have arisen from the Dead-Weight Operation, if the whole had been realised.

Years.	I. Annuity Sold.	II. Payments made by Purchasers of the Annuity.	III. Excess of payments made above Annuity received.	IV. Borrowed money contained in the Sinking Fund.	V. Real surplus of income contained in the Sinking Fund.
	£.	£.	£.	£.	£.
1st	2,800,000	4,900,000	2,100,000	2,100,000	2,900,000
2nd	2,800,000	4,700,000	1,900,000	1,900,000	3,100,000
3rd	2,800,000	4,540,000	1,740,000	1,740,000	3,260,000
4th	2,800,000	4,410,000	1,610,000	1,610,000	3,390,000
5th	2,800,000	4,290,000	1,490,000	1,490,000	3,510,000
6th	2,800,000	4,110,000	1,310,000	1,310,000	3,690,000
7th	2,800,000	4,000,000	1,200,000	1,210,000	3,800,000
8th	2,800,000	3,860,000	1,960,000	1,960,000	3,940,000
9th	2,800,000	3,720,000	920,000	920,000	4,080,000
10th	2,800,000	3,590,000	790,000	790,000	4,210,000
11th	2,800,000	3,450,000	650,000	650,000	4,350,000
12th	2,800,000	3,310,000	510,000	510,000	4,490,000
13th	2,800,000	3,180,000	380,000	380,000	4,620,900
14th	2,800,000	3,050,000	250,000	250,000	4,750 000
15th	2,800,000	2,910,000	110,000	110,000	4,890,000
16th	2,800,000	2,790,000	—	—	5,000,000

At the end of the sixteenth year from the commencement of the transaction, the annuity to be paid and the instalment to be received are the same, at least within one thousand pounds, and from this point repayment commences. Let us suppose, now, that this sixteenth year is arrived. It is evident that, in receiving the annual sums which stand in column II., the nation contracts an annual loan to the amount of the excess of those sums above the fixed payment which it makes in column I. This excess is represented in column III. It is also evident that, in the sixteenth year, it will

owe all these loans which it has contracted, and that at compound interest, reckoned according to the number of years which have elapsed since the receipt of each of these sums took place.

Let us now turn to the other simultaneous operation, the sinking fund of five millions, taken from the excess of the gross receipt above the gross expenditure. This fund consists then of two parts: one part being money borrowed, which stands in column IV., and the other part the produce of taxation. The destination of this fund being accumulation, it will have accumulated at compound interest during sixteen years, and will now, in the sixteenth year, be clearly ours, applicable to the discharge of any incumbrance. But the part which consists of money borrowed will have become by accumulation exactly the same amount with the debt incurred. We may, therefore, have the satisfaction of transferring this part of our accumulated fund from the account of the nation to that of the contractors by whom it was originally advanced, and our debt to them will be acquitted. It would clearly, however, have been the same thing if we had entirely omitted this part of our fund, though we might thereby have lost an amusement, which, for a great nation, however, is perhaps rather a childish one. But the above representation, which shows the operation to be null, is yet too favourable. Even so indeed the dead-weight annuity is but an indirect repetition of the loans raised for the old sinking

fund, and public cash, which passes through the money market, generally suffers loss of weight upon its passage. The cabinet which jobs stock will be as much a loser as the gentleman who breeds cattle or raises corn. It was assumed that, in the sixteenth year, we should pay off, with the accumulated money borrowed, the accumulated debt contracted. But such was not the view of those who planned this scheme. The payment, according to their intention, was to be made by the constantly-increasing difference between the diminishing amount to be received and the fixed annuity, 2,800,000*l.*, to be paid during the other twenty-nine years, which remain of the whole forty-five. Now, it is certain that if the operation have been rightly calculated, and the rate of interest have been steady, this growing annuity which we have engaged to pay from the sixteenth year, I mean the growing excess of the 2,800,000*l.* beyond the diminishing sum to be yearly received, will be of equal value with the debt incurred, and therefore of course equal also to the borrowed money accumulated in our sinking fund; and consequently the contractors may be considered as willing to exchange their annuity for this equivalent capital. But let the interest of money have fallen during these sixteen years. Now it is evident that when the rate of interest is 5 per cent., the value of a perpetual annuity of five pounds, one year before the day on

which it is payable, will be one hundred pounds. If the rate of interest fall to 4 per cent., an annuity of four pounds will be worth a hundred; and one of five pounds will now be worth a hundred and twenty-five pounds. For the same reason the value of a terminable annuity will also rise when the rate of interest falls. Let the rate of interest then have fallen in this case before the sixteenth year of the operation. The value of the annuity guaranteed to be paid by Government will have risen; consequently the annuitants will expect to receive a larger immediate capital in exchange for it than if interest had remained at the old rate. But will the Government have more to give? On the contrary, they will have less. For the annual instalments which they have received will accumulate to a less amount than otherwise, under a lower rate of interest: so that the nation will be doubly the loser.

This mutation of value, in fact, occurred with regard to that part of the dead-weight annuity which has been already sold. It seemed more convenient to represent the proposed transaction as if it had been entirely realized, though hitherto, as you are aware, it has only been partially executed. For, in 1822, when the Act for this purpose passed, though communications took place with various corporate bodies, and chiefly the South Sea company, no bargain was concluded. The annuity of 2,800,000*l.* was therefore vested in trustees, who

were empowered from time to time to sell so much of it as would enable them to make the payments required for the year.

But in March, 1823, a portion of the annuity for the whole term, amounting to 585,740*l.*, was sold to the Bank of England, on condition of their paying to Government the excess of the decreasing annual instalments (originally calculated to be sufficient for payment of the pensions) above 2,800,000*l.*, as well as that portion of the annuity which they had themselves purchased, until the 5th July of the present year. I find it difficult to express this complicated transaction clearly. Perhaps the following will be the simplest view of it: the Bank engaged to pay the difference between the 4,900,000*l.*, &c. and the 2,800,000*l.* (for we will put their receipt and repayment of the 585,740*l.* during these five years out of the question), in return for a clear annuity of 585,740*l.*, to commence on the 5th of July, 1828, and to continue for the remainder of the term of forty-four years, from 5th of April, 1823. Such appears to me the simplest view of this transaction. According to the more complicated view, by which we include in the payments made by the Bank its repayment of the annual 585,740*l.* which it received, it engaged to pay, before the 5th of July, 13,089,419*l.*, of which it had paid, on the 5th of last January, 12,061,919*l.* It remains for the Bank to pay 1,027,500*l.* on the 5th of July next, and they will

then have completed their engagement. It will remain for us to perform our part of the contract, by paying to that body an annuity of near six hundred thousand pounds for thirty-eight years and three-quarters.

On the 21st of March, 1823, when this annuity was sold, its value, according to the calculations of Mr. Finlayson, actuary of the treasury, the long annuities being at about 20.2 years' purchase, was 11,809,881*l.*

On the 6th of July, 1824, when the rate of interest had fallen and the long annuities had risen to 22.4 years' purchase, its value had also risen to 14,793,868*l.*

On the 5th of January, 1826, long annuities being at 19.87 years' purchase, its value was 13,171,354*l.*, and this may be about its value at the present time. It is, I believe, understood in the city, that the Bank have made an excellent bargain. This part, then, of the operation terminates on the 5th of the approaching July, and it now rests with Parliament to determine whether this fallacious operation shall be resumed.

The value of the dead-weight annuity, 585,740*l.*, was, as we have seen, 13,171,354*l.* in January, 1826. It can be little (if at all) lower now, and the debt thereby owed at this time may be safely assumed, deducting the balance to be received, in July next, at not less than twelve millions sterling, or fourteen millions 3 per cent. stock.

In the other financial operations of the last five years there is not much to notice, except a truly remarkable repayment by Austria of two millions and a half, on a loan of seven millions capital, which had been chargeable to this country for a quarter of a century. Stocks being at 96, the 2,500,000*l.* money were only worth 3,200,000 consols.

In the same year, 1824, in consequence of the rapid fall of profits, Government were able to reduce the interest on the 4 per cent. stock to three and a half. There existed, at that time, 74,825,000*l.* stock of this description payable in London, and 1,020,000*l.* in Ireland.

Of this amount, about seventy millions were converted into three and a half per cents. without any increase of nominal capital, and an annual saving was thereby effected of 381,000*l.**

The amount of fours finally non-assented was about six millions (6,163,000*l.*). These were paid off at par with Exchequer Bills, and the Exchequer Bills with their interest charged to the sinking fund, the whole amount of six millions $3\frac{1}{2}$ per cent. reduced being also placed to its account, and considered as redeemed.

The amount of stock standing in the account of the sinking fund, in January 5th, 1826, was eighteen millions. But it was indebted, on account of the non-assented six millions which stood in its

* Fairman *on the Funds*, Appendix, p. 3.

name, to the amount of 3,759,000*l.* Exchequer Bills, which are distinctly excluded in the general finance statement of those bills. The consequence of this anticipation of the fund was, that, in the next year, ending 5th January, 1827, the commissioners were only able to expend about eleven hundred thousand pounds in the purchase of stock, nor was it finally cleared until the ensuing quarter-day.

The sinking fund being then thus circumstanced on the 5th January, 1826, you will, I think, agree with me, that, in the following passage of the financial minister's speech in the subsequent session, the colouring employed is rather too warm and glowing.

"On the 5th of January, 1823, the public funded debt amounted to 896,530,000*l.* On the 5th of January, 1826, it amounted only to 778,126,000*l.*, being a reduction, in the three years, of *eighteen millions* (18,401,000*l.*), which is at the rate of nearly 6,134,000*l.* per annum *."

But for these eighteen millions so redeemed, there remained four millions still to be paid, which did not, however, appear in the unfunded debt of the year. And since these four millions constituted nearly the whole of the sinking fund for the ensuing year, the reduction would be spread over the surface of nearly four years, and the reduction effected

* Hansard's Parliamentary Register, March 13, 1821.

at the time could be not much more than fourteen millions. But the *dénouement* is really curious. On the 13th of March, the country is congratulated on a reduction of eighteen millions debt, of which four millions remained to be paid for. On the 12th of April following, exactly one calendar month later, I find the following event announced, with unwonted solemnity, by Mr. Fairman, a grave and excellent writer on the funds.

"On the 12th April, Mr. Henry Hase, the chief cashier to the Bank of England, appeared at the Stock Exchange, with a statement of the terms proposed by Ministers for funding eight millions of Exchequer Bills into a *new stock*, bearing 4 per cent. interest. As every 100*l.* money in this transaction represented 107*l.* in the new stock, it occasioned an addition of eight millions and a half (8,560,000*l.*) to the funded debt of the country."

Thus does the favourable balance of eighteen millions melt away till not six remain, and thus did we openly recur to the old system of creating debt with one hand and redeeming it with the other. We could not at this time raise the more innocent loan from the sinking fund itself; because, as we have just seen, that fund was, at the time, so deeply pledged that it had nothing to lend.

It only remains for me to strike the final balance as well as I am able, which I will now attempt to do, as shortly as the necessary details will allow.

Mr. PEEL'S *Statement, 5th January*, 1828.

	Unredeemed Capital of Funded Debt.	Annual charge on Ditto.	Ditto with Annuities.	Ditto with charge on Funded Debt.
	£.	£.	£.	£.
Jan. 5, 1823	796,530,000	26,419,000	28,596,000	30,027,000
Jan. 5, 1828	777,476,000	25,500,000	28,381,000	29,254,000
Diminution	£.19,054,000	919,000	215,000	773,000

There is, then, an apparent balance in our favour, on the funded debt, of nineteen millions stock in the last six years. But there is the following amount of set-off against it.

It will be unnecessary particularly to notice the eight millions 4 per cents. created in 1826, because, contrary to the usual practice, about six millions of 4 per cents. (now 3½ per cent.) have been transferred to the sinking fund; but this consideration will entitle us to value the other items in 3 per cents.

SET-OFF.

	3 per cent. Stock.
By portion of Austrian Debt, paid by Austria, valued in Consols at 96 . . .	£. 3,200,000
By present value of Dead-Weight Annuity deducting the million yet to be received, value at the present price of 3 per cents.	14,000,000
By Stock converted into Life Annuities, from Jan. 1823 to Jan. 1827	2,308,000
By Stock purchased with unclaimed Dividends to 5th Jan. 1827. . . .	530,000
By Stock unclaimed for ten years and upwards, to 5th Jan. 1827	212,000
	£.20,250,000

The omission of the stock transferred for life annuities in the last year, the amount of which has not yet appeared, and also of the stock redeemed on the account of land tax, will entitle us to insert the stock transferred for life annuities until 5th January, 1827, as still existing.

Thus, it appears that there is a set-off more than sufficient, by one million, to cover this apparent decrease of our debt. On the other hand, there had been a slight increase of three hundred thousand nominal capital, by the conversion of loyalty fives into threes. The balance against us will still be three quarters of a million; but I will content myself with assuming that there is no balance in our favour on this head.

We come next to the decrease in the interest of these funds, with their charge of management. The decrease on this head is about one million; but this, as Mr. Peel very justly observes, "does not comprise a fair view of the aggregate amount of the unfunded debt and the charge upon it. The annuities on the public funds are terminable in point of fact, but at so distant a period as scarcely to warrant the introduction of any calculations to be founded on their expiration."

The account corrected by the addition of the annuities, according to Mr. Peel, is as follows:—

5th Jan. 1823	£.28,596,000
5th Jan. 1828	28,381,000
Diminution	£. 215,000

But it must be remembered that, during this interval, the general fall of profits had enabled government to reduce the 4 per cents. to 3½, by which an annual saving was effected of 381,000*l*. The partial repayment of the Austrian loan being also taken into the account, it will stand thus:—

Diminution of annual charge, arisen by fall of interest on 4 per cents.	£.381,000
Ditto, by partial repayment of Austrian Loan, at interest of 3 per cent. on money remitted	75,000.
Total	£.456,000
Decrease that appears in this charge . .	215,000
Default of decrease	£.241,000

There is, then, an excess of the set-off against the balance in our favour, on the total annual charge of our funded debt, by two hundred and forty thousand pounds.

Instead, then, of a reduction on this charge of our fixed debt, there has really been an increase; for the charge has diminished, as it were, of itself four hundred and fifty thousand, and it has been allowed to diminish only by two hundred and fifteen thousand.

We must, however, make some allowance, as before, for the conversion of perpetual annuities into sinking fund life annuities. For this purpose, forty thousand, together with the life annuities which have expired, must be, I should think, ample.

This excess of two hundred thousand pounds per annum, valued even under a rate of interest as high as 5 per cent., would be worth four millions.

Here, then, is the gist of the whole matter. In the course of five years of peace, while we were taught to believe that we had a clear surplus of five annual millions steadily accumulating at compound interest, and, undermining the mass of debt which presses us to the ground, the annual charge of that fixed debt has diminished less, by two hundred thousand pounds, than it would naturally, if it had remained untouched during this period. But I will give up this default of diminution, on account of the terminability of the newly-created Bank annuity. The allowance is full large, as any actuary would say, but the case is so strong that I can afford to throw them away. I will say, that it has only diminished as much as it naturally would. To what purpose then have we a sinking fund? A real sinking fund is a wholesome institution, honourable to its inventor, and honourable to the nation which adopts it. Its first principle is self-denial. For in it we endeavour, by taxing our own means of enjoyment, to lighten the load that we have laid on our posterity, and to strengthen their hands for the maintenance of national independence. A sham sinking fund, fed by Exchequer Bills, balances, and dead-weight annuities, is a fund into

which fools may throw their money, but where knaves will be sure to find it.

But though this new machine of the second period has completely failed in the object of its construction—the reduction of our funded debt, it has, perhaps inadvertently, by a side blow, worked upon our unfunded debt. I know not, nor can I, amid the confusion in which that subject is enveloped, submit to you any positive conclusion; but, upon the following few data, I think a negative inference may be fairly formed:—

	Unfunded Debt in Finance Accounts of 1823.	Balances in the Exchequer, by Finance Accounts.	Unfunded Debt, according to Mr. Peel.
	£.	£.	£.
Jan. 5, 1823	41,485,000	7,797,020	42,209,000
Jan. 5, 1828	—	4,228,753	34,770,000
Diminution	—	3,568,267	7,439,000

Does it appear to you a very hazardous conjecture, that the real reduction of debt on this head is not more than the difference between the two sums of 3,568,000*l.* and 7,439,000*l.*, which express the respective diminution of the amount to be paid and of the amount to be received at the latter of the two dates.

If this conjecture be admitted, the result will be, that, in the last five years, with a supposed sinking fund of five annual millions, we have paid off—(for I have given up the four millions default of decrease in the funded debt)—that we have really

diminished the total amount against us by four millions. And since the balance on the unfunded debt seemed to be, in 1823, one million against us, as compared with 1815, it would seem a negative inference, which might perhaps be safely drawn, that more than four millions have not been really reduced since the 5th of January, 1815.

There is another view of the case, which decides me to adopt this negative conclusion. This debt is stated, by Mr. Peel, to have been forty-four millions in 1814, and to be thirty-four millions now. I find in an unofficial work *, which seems to be drawn up with great care, that the balances in the Exchequer were, then, 15,729,928*l.*; and I find, in the Parliamentary accounts of this year, that they are now 4,228,753*l.*, being more than the whole difference of ten millions stated by Mr. Peel. Surely, then, it may be safely assumed, that our floating debt has not really been diminished by more than four millions since 1814. I have yet two words to say on the interest of that debt, which may be thus inferred from the Home Secretary's numbers:—

	5th Jan. 1815.	5th Jan. 1828.
	£.	£.
Total charge of Funded and Unfunded Debt	33,679,000	29,254,000
Total charge of Funded Debt .	30,488,000	28,381,000
Charge of Unfunded Debt . £.	3,191,000	873,000

* Statistical Illustrations of the British Empire, 3rd edition, page 137.

It appears, then, that the annual charge of the unfunded debt is, this year, less than one-third of what it amounted to in 1814; while the capital debt, so denominated, is, according to Mr. Peel, more than three-fourths of its former amount.

I do not see how even the great fall of interest which has taken place in the interval can account for so large a proportionate difference in the diminution of the capital, and of the charge under this head.

This fall, however, has been very considerable; for the interest on Exchequer Bills, at the former period, was three-pence half-penny per diem; it has been now, for some time, two pence, a reduction having taken place as from seven to four. If, then, the same amount of Exchequer Bills, as on January 5th, 1816, were now in existence, having run the same number of days, the amount of their interest would have diminished by three-sevenths, or not much less than one-half.

Charge on a given amount of Exchequer Bills, Jan. 5, 1816, at threepence half-penny per diem	£.3,191,000
Charge on the same amount, at twopence per diem	1,823,000
Decrease of charge, by fall of interest	£.1,368,000

This decrease of charge by the fall of interest will, of course, assist to trim the final balance of the total charge of our debt.

The total charge of Debt was,	Jan. 5, 1816	£.33,679,000
Ditto	Jan. 5, 1828	29,254,000
Total diminution of charge		£. 4,425,000

The following parts of the diminution have been effected without any payment of money on our part;—

By fall of interest on 5 per cents.	£.1,196,000
By ditto on 4 per cents	381,000
By fall of interest on Exchequer Bills, from three-pence half-penny to two-pence	1,368,000
By Imperial Annuities expired	211,000
By part payment of Austrian Loan	75,000
Total diminution which has arisen, independently of payment by us	£.3,231,000

Deducting the latter amount from the former*:—

Total diminution	£.4,425,000
Diminution by fall of interest	3,231,000
Diminution by payment	£.1,194,000

The reduction, then, of total annual charge, effected by payments since 5th January, 1816, is about twelve hundred thousand pounds; but it must be remembered that the balances in the Exchequer were then fifteen millions, and are

* No mention is made of increased charge by life annuities, because it is presumed that the life annuities of all classes, which have fallen in together with some other small items, are more than sufficient to balance that increase.

now little more than four. Now, the interest of ten millions at even 4 per cent. is four hundred thousand a year, which must be deducted from the twelve hundred thousand, if we would know the diminution effected by taxes falling due since 5th January, 1816.

Large, then, as the reduction in the gross charge certainly is, it appears that it must be principally attributed to the fall of interest; and I suspect that our merchants and manufacturers would not be unwilling to return to the higher rate of charge, if they could, at the same time, receive their higher rate of profits. Be that as it may, however, whether or not the reduction of annual charge be the measure of our relief, the amount of capital reduced is the measure of our economy.

At the close, then, of the first seven years of this peace, with an annual sinking fund of from thirteen to fifteen millions, we had contrived, I know not how, to achieve the redemption of about seventeen millions and a half of 3 per cent. stock (for they were almost exclusively 3 per cents.), which, upon the average of the seven years, will have been worth almost thirteen millions sterling, almost the lowest amount of the old sinking fund in any of those years.

In the second period of five years I am willing to hope that, professing to lay aside five millions in the sinking fund of each year for the redemption of our funded debt, we may have paid

four millions of floating debt, or nearly the amount of the new sinking fund for one year.

We have, then, laid by altogether, in this peace of twelve years, perhaps as much as seventeen millions, out of our incomes, for the discharge of our debts.

Perhaps we may have a continuance of peace for twelve more years; perhaps not for one year: but the hope of twelve years' peace will be a large expectation. During those, however, which have already elapsed, our desire or our means of accumulation have gradually waned. It is not probable that, in the next twelve years, we shall apply more than one annual million to the acquittal of our incumbrances; for in the last five years we may, at the most, have paid off four. We shall, however, under this supposition, have appropriated twelve years hence, nearly thirty millions of money, to the restoration of our finances. Now, in the year 1815, we borrowed forty-three millions of money, and funded eleven millions of Exchequer Bills, creating thereby eighty-seven millions of capital debt; so that, if we consider only the money thus raised, without attending to the Exchequer Bills, we shall, at that distant period, be worse men by twelve millions sterling than we were when the general rejoicings took place in Hyde Park, for the conclusion of the Revolutionary war.

But if this annual million be indeed redeemed in future years, it must be either through improve-

ment of revenue or increase of taxation, as the following numbers, taken from the Parliamentary Accounts, too clearly show :—

	Income paid into the Exchequer.	Nett Expenditure, exclusive of sums applicable for the redemption of Funded Debt, or for paying off Unfunded Debt.	Surplus of Income after Expenditure.	Deduct from Surplus these Life Annuities, paid out of Sinking Fund.
Jan. 5	£.	£.	£.	£.
1827	54,894,989	53,885,541	1,009,448	576,269,000
1828	54,932,518	53,800,291	1,132,226	589,250,000*

It appears, then, at first sight, that we have had, in each of these years, a clear surplus of income over expenditure of about one million, applicable to the payment of nearly six hundred thousand a year life annuities, and also to the disbursement of five millions in the redemption of capital stock. Though the official surplus, however, be scarcely adequate to so large a demand upon it, the truth appears to be, that this official surplus is a real deficiency; for, in the above amounts of receipt and expenditure are included the following two well-known items of the dead-weight transaction :—

	Received from Trustees of Military and Naval Pensions.	Paid to Ditto, and to Bank.	Borrowed by difference.
	£.	£.	£.
Jan. 5, 1827	4,380,000	2,800,000	1,580,000
Jan. 5, 1828	4,245,000	2,800,000	1,445,000

* This amount is stated to be chargeable on the sinking fund on the 5th January, 1827. It must be less than the amount actually paid. There are also charged 81,400*l.* for Waterloo Annuities, which I have in no case included.

The third column shows the amount of loan raised in each year, by the difference of the sums which stand in the two other columns.

These loans being about a million and a half in each year, and the official surplus being about one million, which is reduced to half a million by the life annuities, it is difficult to imagine that the real balance of each year has not been one million against us. A part of that million indeed is not expended but lent, the advances made by Government for public works, &c., having exexceeded the miscellaneous repayments; but since this excess is likely enough to continue, we cannot reckon much on its effective return for the other expenses of any year.

The least which can be said, then, is this:—The reductions in the estimates of annual expense will not cover the demand upon our income, resulting from the expiration, in next July, of the deadweight contract, which it can hardly be intended to renew; and I believe that I am far within the truth in stating, that if the House of Commons now adhere to their Resolution of June 9, 1819, "*That it is absolutely necessary that there should be a clear surplus of the income of the country beyond the expenditure of not less than five millions,*" they must be prepared to impose an additional taxation, to the amount of five millions, upon this country.

It is difficult indeed to ascertain why the name of

a sinking fund has been maintained for the last two years; I mean, rather, why any stock should have been converted into Exchequer Bills during those years, unless perhaps because the capital of the funded debt is more conspicuous than the sum of our floating incumbrances.

As a mere matter of taste, it is certainly well judged to diminish any prominent object which disturbs the fore-ground of a landscape, though we be obliged to deposit the materials so removed upon another heap, less offensive because less seen, in the back-ground. In all these matters, however, a prudent person will weigh the cost against the advantage. There is also, generally, a limit at which the advantage ceases, and that point we seem to have reached in this business at the present moment.

It has been hitherto assumed, in this hasty examination, that the pounds sterling which stand in the accounts of the year ending 5th January, 1816, are the same pounds sterling with those which stand in the accounts of the 5th January, 1828, and we have seen that under this supposition the diminution of debt effected within that period has been, at the most, seventeen millions of money.

But it is now generally acknowledged, that the pound note of the years 1815–16 is no more the pound note of this day than our present silver pound is the original pound troy of Charlemagne.

There is no dispute but that, during the years in which the Bank of England was restrained from cash payments, its one-pound note exchanged for

a less quantity of gold than is contained in our present sovereign, or one-pound piece. In this, all who have attended to the subject are agreed: it is a fact which is remembered by most of us.

The first column of the following Table, drawn up by Mr. Mushet, the accuracy of which was never disputed, shows the quantity of paper or silver money for which an ounce of gold was exchanged during the first twenty years of the present century, the silver money being so much worn out, that franc pieces, twenty-five of which make twenty of our present shillings, were largely imported, and circulated indiscriminately with those shillings among us.

Year.	Price of the Ounce of Gold.	Value of £.100 paper in Gold.	Value of £.1 Bank Note.		
	£. s. d.	£. s. d.	s.		
1800	3 17 10½	par.	20		
1801	4 5 0	91 12 4	18.3		
1802	4 4 0	92 14 2	18.5		
1803					
1804					
1805					
1806	4 0 0	97 6 10	19.4		
1807					
1808					
1809					
1810	4 10 0	86 10 6	17.3		
1811	4 4 6	92 3 2	18.4		
1812	4 15 6	79 5 3	15.85		
1813	5 1 0	77 2 0	15.42	s. 16	s. 16.3
1814	5 4 0	74 17 6	15		
1815	4 13 6	83 5 9	16.65		
1816	4 13 6	83 5 9	16.65		
1817	4 0 0	97 6 10	19.5		
1818	4 0 0	97 6 10	19.5		
1819	4 1 6	95 11 0	19.1		
1820	3 19 11	97 8 0	19.4		
1821	3 17 10½	100 0 0	20		

The third column shows in twentieth parts of a sovereign, which I have called shillings, without any reference to the quantity of silver now contained in that coin, the quantity of gold for which a bank-note was exchanged in the several years. Thus it shows, that, in the year 1814, a pound note exchanged for three quarters of the quantity of gold contained in our present sovereign; that on the average of the five years, 1812–1816, it exchanged for four-fifths of our present sovereign; and, on the average of the seven years, 1810–1816, for a fraction more than that quantity.

So far there can be no difference of opinion; but here, as you are aware, unanimity ceases.

The Bank of England maintained that the value of its notes had been constant, and that the whole variation was attributable to a rise in the value of gold; others, men whose judgments carry great weight, and to that opinion I believe you incline yourself, say, that not only had the value of the one-pound note fallen in the proportion indicated by the change in its relation to gold, but that gold also had fallen in value, in consequence of its temporary disuse for monetary purposes in this and other countries. I think, however, without questioning the justice of your opinion, that it will at present be most simple to assume that gold itself had been constant; but, as far as the comparison of our finances in 1828 and 1816 is concerned, it is perfectly indifferent whether that metal be sup-

posed to have been constant, or to have risen until the former period.

Let its value have been what it will in 1814, there can be no shadow of reason for supposing that it has fallen since.

I know that, on the other hand, many men very conversant with these matters, suppose that the value of this metal rose, between 1816 and 1820, ten or twenty per cent., in consequence of its large absorption in our coinage. Others deny this, and assert that its value has been steady; but no one has ventured to suggest that it has fallen since 1814.

If gold, then, has been constant since 1814, which is the least that we can assume, it is clear, that if a pound note were then worth three quarters of the sovereign piece, and is now worth the whole of it, he who pays a pound note now, pays a greater amount by one-third than he who paid a one pound then.

There probably was, I think, a rise in the value of gold upon the resumption of cash payments from 1817 to 1820, though I own I cannot but think that the temporary increase of demand must have been by this time fully supplied. This rise would certainly make the case stronger; but for the sake of simplicity I must refuse to admit it. I wish to content myself with the bare assumption, that an ounce of gold is not worth less now than in 1814.

There is one consideration to which, however, I must advert—I mean that imaginary kind of value called relative. According to those who entertain this notion, the value of a commodity depends, not upon its own conditions of production, but upon the quantity of any or every other commodity which it will command in exchange for itself; that is to say, upon the fluctuations in the producing cost of every other commodity. This value of gold has certainly risen much in the last twelve years; for gold commands more corn, more wool, and more, probably, of most staple commodities than it did then. But I believe this view of value to be most fallacious, and only mention it to show in what direction it would affect the present case if it were admitted; having done so, I leave that matter for political economy, to which I know you will most gladly abandon it.

A one-pound note then, in 1814, was worth three-quarters of our present pound piece of gold. If that metal has not fallen in value, and every presumption lies the other way, three-quarters of a pound sterling now are of the same value as a whole pound sterling then. And the pound sterling has received an accession, from 1814 to 1820, of one-third of its value. Consequently, if any one were in the payment of a fixed annuity of 100*l.*, during those years that payment would have increased, from 1814 to 1820, by one-third. In 1814 he

paid one hundred three-quarter sovereign pieces; in 1820 he paid one hundred sovereign pieces This augmentation is absolutely rated upon the very lowest supposition that can be admitted, namely, that gold has only not fallen in value.

This case is really so clear, that I am at a loss for any further argument with which to support it, because I can find none by which it can be oppugned.

I can only repeat, that a given quantity of gold must be supposed to be of no less value now than in 1814. Let that given quantity be three-quarters of our present golden sovereign. A whole pound sterling was, in 1814, of equal value with that given quantity. In 1828, three-quarters of a pound sterling are of equal value with that given quantity. The inference that a pound sterling then was of the same value as three-quarters of a pound sterling now, rests upon the simplest of all possible propositions, that things which are equal to the same thing are equal to one another. I will only add a case in point, which was mentioned to me lately by a mutual friend. Happening, at the time we are speaking of, 1814, to inquire the price of some article in a shop at Bath, he was told that it was so many pounds, and as he had a few guineas in his purse, he asked what allowance would be made for payment in that coin. The answer was, that each guinea would be reckoned as twenty-eight shillings! Now this is precisely

the ratio stated in Mr. Mushet's tables. According to them, three quarters of the gold contained in our present sovereign were worth, in 1814, one pound sterling in paper, being an increase by five shillings, or one-third, in its denomination. In this instance the guinea was rated at twenty-eight shillings, being also an increase of one-third, or seven shillings.

Indeed, if our note had been subject to no discount when it had ceased to be convertible into coin at the will of the holder, it would have probably furnished the first known instance of a paper currency, so circumstanced, that was not depreciated. It would have been, I believe, the single exception from the general law. The instability of an inconvertible paper medium has been seen not very long since, in the United States, in France, in Prussia: it may be seen at this day in Austria and in Russia. How is it then, that, while the Austrian and the Russian distinguish accurately the florin or the rouble of paper and of silver, the Englishman, in general, neglects to observe the difference between the sovereign of 1828 and the pound note of 1814, discounted at three and thirty per cent? This inadvertence is, I think, to be accounted for by the coincidence of two circumstances, which affected separately our two principal kinds of metallic currency at the time when the pound note was at a discount.

Since our law forbade the exchange of a guinea

for more than one and twenty shillings, when the value of the pound note sank, it was found impossible to obtain the value of the gold piece while it retained its monetary form. These coins, therefore, were surreptitiously converted into bullion. But the silver coins had lost, by age, so much of their weight, that they were become mere counters, and the metal remaining in twenty of these worn-out shillings was probably not more than the original contents of fifteen. Thus the gold coinage, from its extreme rarity, had ceased to present a measure; and the silver coinage, from the reduction of its weight, furnished a fallacious measure of the value of our paper currency.

The discount, however, was not less certain, though less observable. The distinction, therefore, between the pounds sterling of different values should be carefully retained, if we wish to institute a real comparison of any amounts stated at the different periods between which such fluctuation took place. We may then call the pound note of 1814 a three-quarter sovereign, or fifteen shilling piece, meaning by the shilling the twentieth part of a sovereign.

In the same manner, we may call the one-pound note, or pound sterling of 1815–16, a sixteen and eightpenny piece. If its equivalent quantity of gold had been coined, the piece of money would have contained a trifle more of that metal than the

French twenty-franc piece, or napoleon. We can easily represent to ourselves the effect which would be produced upon the French finances, if the whole annual charge of our neighbours' debt were to be suddenly converted from napoleons into an equal number of sovereigns. The national incumbrances would be manifestly increased by one-quarter of their present amount. But the same change has taken place among ourselves, since the battle of Waterloo, and since the commencement of that succeeding year, with the charges of which the Home Secretary has instituted his numerical comparison of our present burthens; and we do not remember that the somewhat higher figures of those days numbered napoleons, while our present tale is heavily counted down in sovereigns.

It may not perhaps be uninteresting to you, however, to compare the quantities of gold, which are really designated by these series of numbers at the commencement of the peace, and at the present time.

The often-repeated numbers are these:—

	1816. Pounds of 16s. 8d.	1823. Sovereigns.
I. Interest of unfunded debt with charge of management	28,278,000	25,500,000
II. Ditto, with the annuities .	30,488,000	28,381,000
III. Ditto, with the charge on unfunded debt	33,679,000	29,254,000

But the numbers alone convey a very erroneous impression; and even when we recollect that they designate very different units of gold, it is extremely difficult to estimate, at sight, the different quantities of that metal which they represent. In order to compare them easily, it is requisite to reduce the two columns to the same denomination. I will therefore first reduce the amounts of 1816 to pounds sterling of our present standard.

	1816. Sovereigns.	1828. Sovereigns.	Increase in Sovereigns.
I. Interest of funded debt, with charge of management .	23,612,000	25,500,000	1,888,000
II. Ditto, with annuities	25,457,000	28,381,000	2,924,000
III. Ditto, with charge of unfunded debt	28,121,000	29,254,000	1,138,000

Thus it appears that, notwithstanding the numerical decrease in our annual charges, between 1816 and 1828, we actually pay at this day one million more on the total charge, two millions more on the interest of funded debt, and three millions more on charge of funded debt and annuities, than in the first year of the peace.

The following Table exhibits the same result in a different form. It contains the charges of the two years, both stated in the pound sterling of the former year.

	Pounds of 1816.	Pounds of 1816.	Increase in Pounds of 1816.
	1816.	1828.	
I.	28,278,000	30,538,000	2,260,000
II.	30,488,000	33,989,000	3,501,000
III.	33,679,300	35,034,000	1,355,000

The increase of charge shown in these Tables is, as you will observe, entirely independent of the rise or fall in the value of any commodity. They simply state the quantities of gold contained in the payments of the two years; and, in asserting that the charges have risen in the proportion indicated by the differences of the numbers in the two columns, I merely assume that the value of gold has been stationary since the year 1816, which, if any one disputed, the *onus probandi* would clearly be with him.

It may perhaps be also worth while to ascertain what would have been the amount of our present incumbrances, if the Bank restriction had been continued, or, what would have been a more advisable alternative (I mean, supposing that it had not been thought necessary to return to the old standard), if pound pieces of gold had been coined equivalent to the pound-note of 1815–16. I will suppose that we should now pay the same number of light pounds as we do pay of heavy pounds; and if it be doubtful whether the same reduction of interest would have occurred (an advantage in itself very problematical), it is not, I

think, to be doubted that we should have been enabled, with the amount of taxation which has taken place, to reduce those charges by redemption even below their present amount.

	The charges of the present year would have been, by supposition, in Pounds of 16s. 8d.	The same charges would have been in Sovereigns.	Charges would have been less than they are by Sovereigns.
	£.		
Charge of funded debt . .	25,500,000	21,292,000	4,208,000
Ditto, with annuities . .	28,381,000	23,698,000	4,683,000
Do. with charge of unfunded debt . . .	29,254,000	24,427,000	4,827,000

Even then, under the very narrow supposition that our debt would not have been reduced lower than it now has been, we should have been in the payment of nearly five millions less for the annual charge of our incumbrances, which five millions would have afforded us a real sinking fund; whereas, the imposition of three millions of taxes for that purpose have failed in the last two years to secure us any sinking fund at all. With regard to taxation, it may not, perhaps, be uninteresting to you to compare the amount of our burthens in the years ending January 5, 1815, and January 5, 1826. I take this latter year in preference to that which follows it, when the defalcation of the revenue had reduced the national income below the level intended by Parliament.

Even when the accounts of 5th January, 1826, were made up, the real surplus of revenue, exclusive of life annuities and dead-weight loan, was not more than three millions. The accounts of Great Britain being, in 1815, separate from those of Ireland, I will compare the income of Great Britain only at the two points. I will take the amount of taxes which stand in the columns headed thus:—On the 5th January, 1815, "Nett produce applicable to national objects, and payments into the Exchequer;" and, on the 5th January, 1826, "Nett receipt within the year, after deducting repayments," &c.

On the 5th January, 1815, the nett receipt of income by taxes (including the war taxes, and amongst them that on property, amounting to 14,814,101*l.*) was stated at 68,198,589*l.*

On the 5th January, 1826, the taxes amounted to 52,100,968*l.* I will now reduce the nett receipt of the former year into sovereigns.

	Pound Notes of 1815.	Sovereigns of 1826.
January 5th, 1815 .	£.68,198,589 .	51,148,941
January 5th, 1826		£.52,100,968
	Increase .	£.951,027

Thus it appears, that our burthens were, in 1826, greater by one million than in the heat of the war. They have since diminished, but only because our means of payment failed.

comforts, and last of all luxuries. The manufacture of luxuries forms the chief support of commerce; and all these, with no small proportion of comforts, would instantly vanish on such a reduction. But passing over this injury to manufactures, which, I verily believe, would exceed in amount the value of our whole foreign commerce, let us see what reduction, such a diminution of the price of corn would produce on the manufacturers wages. Allowing it to operate to its full amount, it would not exceed one-tenth of the wages. Manufacturers wages, for ordinary work, are now at least from 16s. to 20s. per week. The price of meal is 1s. 3d. per peck. I have shown the consumption of a family living chiefly on meal, to be four pecks per week. The manufacturer does not live so; he eats more butcher meat and less meal; but to take the view most favourable for the manufacturers' argument, let the four pecks be held as the consumption per week; the rent, as already explained, is two-fifths of the produce; the three-fifths are cost, and cannot be touched; therefore, a reduction of the income of landlords one-half, would only lower the price one-fifth. Instead of 1s. 3d. per peck, the price would be 1s. and the amount

of the difference for the week would be 1s. 6d. But the week's wages are on an average 18s.; so that the production of this mountain in labour, would be a reduction of price from 18s. to 16s. 6d. The wages on the Continent, however, are, as stated, not above 6s. per week; so that it is demonstrated, that such a reduction in the price of grain, could have no possible effect, in enabling the manufacturers to send one article out of the country, which cannot be sent out of it at this moment. The only circumstance which can lower the price of manufacturer's wages, is the fall in price of these manufactures abroad. There are always a sufficient number of men, who will be satisfied with moderate profits, to prevent, in an open market, a few individuals from obtaining profits beyond certain limits. This principle creates a competition on the opening of a market, each giving a bounty to the workmen to get his goods ready in time: and however the prices may rise, the masters continue to draw nearly the same profits, their competition increasing the bounty, in the shape of wages to the workmen, through whose means alone, the rise in price can be obtained. The rise or fall of manufacturing wages, therefore, and indirectly through them

of all wages, is occasioned by the manufacturers themselves; the variation depending solely upon the fluctuations in the demand for their manufactures, and upon the avidity with which they compete for the advantage of having their goods early at an opening market.

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